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PREFACE.

It may be said that every one occupies towards somebody else the relation either of landlord or tenant. A knowledge of the main principles of law which regulate their mutual rights and duties, and govern the chief points of practical importance which arise out of the position in which they stand towards each other, must, therefore, be matter of universal concern and interest. But, although these principles, and the rules thence deduced, are in themselves exceedingly simple, and are not difficult of application, they have hitherto remained the exclusive property of the legal profession. No treatise, at once sufficiently popular to be intelligible, and sufficiently accurate to be trustworthy—copious enough to meet the varying circumstances of daily life, and compact enough for ready reference—has yet appeared to fill the place which, in nearly every department of science, and in most branches of industrial art, has long been occupied by more than one series of serviceable hand-books. Not professing to penetrate the more recondite portions of their subjects, they furnish reliable guidance in matters of ordinary occurrence; and if they do not supply the reader with the information necessary to become a practitioner, they often enable him to dispense with the costly aid of such a person, or prevent the mistakes and blunders which

render his interposition inevitable. It is the object of this little work to fulfil the same purpose in regard to the branch of law of which it treats. We have endeavoured to impart to it a thoroughly practical character; and while making it comprehensive in scope, have sought to give prominence to those topics which are of chief importance to the classes who habitually act without legal assistance, and to those points upon which a moderate amount of information may render such assistance unnecessary. A copious Appendix of practical Forms has been added, and these we have some confidence will be found both useful and accurate.

Our explanations have been popularized as far as possible, and very sparing use has been made of legal expressions likely to embarrass the unlearned reader. But law, like every other art and science, has its technical terms. Many of these we have been compelled to use. The meaning of such as occur only once, or only in connection with a particular part of the work, has been given when they are employed. There are some, however, which occur so frequently, and are so far incidental to the whole subject, that, in order to save repetition, we have thought it better to explain them once for all in a short glossary. And we believe that the meaning of every word which can present the slightest difficulty to non-professional persons will readily be found either in this glossary or in the text.

9, Inner Temple Lane,
April, 1857.

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THE LAW

OF

LANDLORD AND TENANT.

CHAPTER I.

GENERAL OBSERVATIONS—WHO MAY BE LANDLORDS AND TENANTS.

THE popular signification of the words *Landlord* and *Tenant* is much less extensive than their strictly legal meaning. According to the feudal institutions, on which our law of real property is based, every subject, even the possessor of a fee-simple, holds his land of—or as the tenant of—the sovereign, who is the supreme landlord. With the doctrines or the consequences that flow from this principle, we have, however, nothing now to do. Our object is simply to explain succinctly and familiarly, but with accuracy and clearness, the main practical bearings of the relation of landlord and tenant, and to furnish such information as may, under

ordinary circumstances, constitute a safe and sufficient guide to persons filling either capacity. We shall, therefore, here use the words merely in their every-day and familiar sense. By a "landlord," we mean one who, having an interest in land, grants to another (called a "tenant") a portion of such interest, either so limited in point of duration, or so much burthened by obligations and agreements, to be discharged or performed; or by payments, either of rent or of a fine to be made, by the tenant to the landlord, that the interest remaining to the latter in the land is of appreciable, if not even of substantial, value. We should scarcely regard the owner of the fee-simple as the "landlord" of another to whom he had leased the land for 999 years at a nominal rent. Such, however, would technically be the case; and important consequences might, under certain circumstances, result from the apparently merely nominal connection thus established between the parties. To trace these is, however, beyond the scope of the present work, which is to deal entirely with the practical and every-day questions arising out of such a relation as we have described above.

Before entering into any explanation of the various descriptions of tenancy, it will be best to consider who may become landlords or tenants.

Every person, except those to whom we shall immediately call attention, may grant to another any interest not exceeding in duration that which he himself holds in any land; and even if a person grants a lease for

a period not necessarily less than his own estate in land, it will be good, and cannot be set aside so long as his estate endures. There are, indeed, some cases in which persons may lease or let land for a term longer than their own estate in it. Tenants-in-tail can, under certain conditions, make leases for twenty-one years, or three lives; and ecclesiastical persons—such as bishops, rectors, &c., who have only a life interest in the estates of the see or in the glebe of the parish, are also, by several Acts of Parliament, enabled to bind their successors. Then, supposing that a wife is the owner of a freehold estate, which has not been made the subject of a marriage settlement, the husband has in it only an estate for the joint lives of himself and wife; or—if he have by her issue who may succeed to the property—a further estate for his own life in case he be the survivor. But under the 32nd Hen. VIII. c. 28, he may grant leases (to commence from the day on which they are made) for twenty-one years, or three lives, of lands which have been usually let during the previous twenty-one years, at a rent not less than that which has been customary during that period. If, indeed, the wife's estate is not freehold, but only leasehold, he may dispose of it as he likes, and may, therefore, grant any leases for a term shorter than that for which it is held; for, on marriage, such estates (if there is no settlement) become absolutely the property of the husband.

Leases made by the guardian of an infant, if such guardian have been appointed by will, are valid until

the heir comes of age; but they may then be confirmed or set aside by him.

Executors and administrators are entitled to any leasehold estates possessed by their testator, and may dispose of or sub-let them as they please, unless he has bequeathed them to a particular person, and they have assented to the bequest;—which they must do if he has left other property not specifically bequeathed sufficient for the payment of his debts. When they have once assented to the bequest, the lease becomes vested in the person to whom it is left as a legacy, and, of course, they have no further right to deal with it.

Assignees in bankruptcy or insolvency may deal with all the lands or houses of the bankrupt or insolvent as freely and fully as he could have done, and may, therefore, assign, lease, or sub-lease them at pleasure.

Leases made by idiots or insane persons are binding, unless steps are taken to set them aside; but they may be avoided on proof of the idiocy or insanity. A lease made during a lucid interval cannot be impeached on the ground of previous or subsequent insanity. The committee of a lunatic may make leases under the direction of the Lord Chancellor.

If an infant make a lease he can avoid it when he comes of age; but if he then by any act—such, for instance, as the receipt of rent—recognise it as subsisting, he will be thenceforth bound by it.

A married woman cannot grant a lease of any land except such as has been settled to her sole and separate use.

The intoxication either of the lessor or lessee will be a good ground for setting aside a lease, if it appear that the party was so drunk that he did not know what he was doing when he executed it; or if while partially intoxicated fraud was practised upon him.

Subject to certain exceptions and qualifications, any one may become a lessee or tenant.

Infants may, within a reasonable time after coming of age, repudiate leases made to them during infancy. If, however, circumstances rendered it necessary for them to reside apart from their family, they may be compelled to pay for the actual occupation of any house or lodgings fairly suitable to their condition in life.

If a lease be made to a married woman, her husband may set it aside, and after his death she may herself repudiate it.

Aliens, the subjects of a friendly State, and residing in any part of the United Kingdom, may now hold any lands, houses, or other tenements, for the purpose of residence or occupation, by themselves or their servants, or for that of any business, trade, or manufacture, for a term of years, not exceed twenty-one years. And if they become naturalised,* they may take and

* Naturalised persons are foreigners to whom the Secretary of State for the Home Department has, by a certificate (in conformity with the 7th and 8th Vict., c. 66), granted all the rights and capacities of a natural-born British subject, except the capacity of being a member of the privy council, or of either House of Parliament. Persons were formerly, and may still be, naturalised by Act of Parliament; but since the above statute this course is seldom resorted to.

may hold any estate whatever, as freely as natural-born British subjects.

The assignee of a bankrupt or insolvent cannot take a lease of any part of the bankrupt's or insolvent's property. At least, if he do, he will be compellable to account to the creditors for any profits which he may derive from it, while any loss which it may entail must fall upon himself.

CHAPTER II.

TENANCIES FOR TERMS OF YEARS, OR LEASEHOLDS.

TENANCIES for terms of years, or, as they are usually called, "leaseholds," are created by lease, which is a contract whereby the use and possession of a house or land is granted by the owner (called the *lessor*) to the hirer, or taker (the *lessee*) for a fixed time (a *term*), at a stipulated remuneration (generally an annual rent), and subject to such conditions or mutual obligations as they may mutually agree upon. The essence of this description of tenancy consists in its being for a term certain.

No precise words, or technical forms of language, are requisite to constitute a lease. Whatever words are sufficient to explain the intent of the parties, that one shall divest himself of the possession and profits of the land and the other come into them for a determinate time, are of themselves sufficient, and will, in the construction of law, amount to a lease for years, as effectually as if the most formal and regular words had been made use of for that purpose. It is, however, hardly necessary to observe, that it would be in the highest degree imprudent to depart from the settled

and established forms which experience, and repeated decisions of the Courts, have sanctioned.

It should be remarked, that although the lease grants the land or house for a term, to commence immediately, the interest or estate of the lessee (tenant) is not, for all purposes, complete, until he has, either by himself or his servants or agents, entered upon the premises; for he can bring no action for any trespass previously committed thereon.

Leases for three years, or for a shorter period, *may* be made by parole (or word of mouth), in case words are used clearly importing that one party then and there *lets*, and the other party then and there *takes*, the premises. But this should never be done, for these amongst other reasons. Doubts might arise in respect to the precise words that passed; whether they amounted to an actual letting then and there perfected, and leaving nothing to be done but the taking possession, or merely to an agreement that one party *would* let, and the other *would* take; the letting and the taking to be carried out at some future meeting, or by some writing to be drawn up. Now, by the "statute of frauds," although actual leases for terms, not exceeding three years, are valid if made orally, yet mere agreements for such leases are void unless reduced to writing. Consequently, even supposing the tenant entered into possession and paid rent, if a jury were to find that words had been used which merely amounted to an agreement for a lease, the tenancy would only be one from year to year, liable to be terminated by a notice

to quit; and if no rent had been paid, it might be that the tenant would be able to leave, or be liable to be turned out at any moment whatever. If, indeed, the tenant had not only entered, but had, in pursuance of and in reliance upon the agreement, laid out money in improving the premises, the Court of Chancery would then, on the tenant's motion, compel the landlord to execute a valid lease. Further:—even if words amounting to a present letting were clearly used (and, still more, if such words had not been clearly used), and the tenant, without having entered upon the premises, refused to carry out the arrangement, the landlord would have no remedy for the breach of contract.

Leases (or as they are perhaps generally called "agreements") for three years are often entered into where the parties desire some arrangement inexpensively carried out, and not so uncertain as a yearly tenancy on the one hand, or so permanent as a long term on the other; and as these are not embarrassed by the highly technical and elaborate provisions which are always embodied in leases for longer terms, they may safely be (as probably they usually are) drawn up by non-professional persons. We have, therefore, inserted in the Appendix* such forms as will be found sufficient.

All leases for terms longer than three years must be by *deed*. In order, however, to avoid the expense entailed by the preparation of such a document, with the usual covenants in full, and by the stamps which are requisite

* See Appendix, page 163.

for its validity, it is not unfrequently the practice merely to draw up an agreement for a future lease, containing an outline of the principal stipulations and covenants to be therein contained. Upon this the tenant enters, and to some extent (as, for instance, against any interruption of his tenancy by the lessor) he is perfectly safe; for although at *law* he would only be treated as a tenant from year to year, *Chancery*, which treats an agreement for a lease as an actual lease, would at any time interfere to prevent an eviction, and compel the lessor to carry out his contract. Still, in no case where the term is long, or the value of the property at all considerable, should an agreement for a lease be relied upon, for if the lessor should choose to sell or grant an actual lease of the property to another party, ignorant of such agreement, the Court of Chancery would decline to interfere against the latter, who would then be able to eject the tenant holding under the agreement merely.

As, however, it may sometimes be thought desirable to avoid expense where the property is not large and the intended term short; or parties may desire without delay to draw up an agreement which may be immediately acted upon, and also serve as a guide in the preparation of a formal lease, we give in the Appendix a form suitable to the case of an intended demise or letting of a dwelling-house.* We have there mentioned specifically the covenants which the intended lease is to contain. This is not always done. It is

* See Appendix, page 168.

not unfrequently stipulated generally that the lease should contain the "usual covenants." As, however, "the usual covenants" are not clearly defined by the practice of conveyancers, there is a looseness about this form of expression which might lead to difficulties. It seems, indeed, that it would be held to include covenants by the lessee to pay rent and such taxes as are not by express enactment payable by the landlord, to keep the premises in repair and to yield them up at the expiration of the term; and a covenant by the lessor that neither he nor any one claiming by or through him would disturb the lessee in the quiet enjoyment of the premises. And in agreements for leases of houses for particular purposes—as public-houses; in mining and farming leases; and perhaps in all leases (at least where there is a stipulation for usual and *customary* covenants)—these expressions would be held to embrace all covenants and clauses which are usually inserted in such leases according to the custom of trade or the usage of the district in which the property is situated. But it is best not to leave a contract to be interpreted by a Court of law.

Before entering into an agreement for a lease, the intending tenant should always ascertain whether the person proposing to become his landlord is the freeholder, or whether he has only a lease of the premises. If the latter should turn out to be the case, this lease must be carefully examined, otherwise the new tenant, who would then have only what is termed an *under-lease*, and could, of course, take no more, nor in any other

way than his immediate landlord had the power to give, might eventually find himself harassed and burthened by restrictions which he did not foresee, and which may render the property wholly unsuited to the purpose for which he desired it. It must also be ascertained that all arrears of rent and taxes have been discharged by the first lessee, for if they have not, the under-lessee will become liable for them.

To come now to the lease itself. This, when by deed, is at present always a document of so elaborate a character that its preparation must necessarily be left to professional hands. We shall not, therefore, encumber our list of precedents with one that could be of no utility to laymen, but confine ourselves to a brief indication of its form and contents.

It commences with what are called the *premises*, which contain the date of the lease, and the names of the lessor and lessee, set forth the consideration for which the lease is granted, and specify its subject-matter. Then comes the "*habendum*," which specifies and defines the duration of the lease, as, "from [either a date named, or 'the day of the date,' *i. e.* of the lease], for, and during and unto the full end and term of —— years thence next ensuing, and fully to be complete and ended." It may be remarked that, generally speaking, leases last during the *whole* anniversary of the day from which they are granted. Sometimes leases are granted for alternative periods,—say, "seven, fourteen, or twenty-one years." In that case, if nothing is said as to which party is to have the option of determining

or continuing the lease at the end of seven or fourteen years, the choice will rest with the *lessee*.

Next comes the "*reddendum*," which reserves the rent to be paid to the lessor.

Then follow the "*covenants*." A "covenant" is simply a *promise* or *agreement*, and would be so called, except in a deed. No precise words are requisite to constitute it; it is sufficient if it can be clearly collected that something is to be done or not to be done by one of the parties to a deed. Even if the lease contained no covenants, expressly set out, still, if it were executed by both lessor and lessee, and the land were occupied under it, the law would imply certain covenants or stipulations,—as, for instance, on the part of the lessor, that the lessee should quietly enjoy the land or house demised; and on the part of the lessee, that he would pay the rent, that he would commit no waste, that he would do proper repairs, that he would cultivate in a husbandlike manner, not cut down timber trees, &c. It should be remarked, that the fact of granting a lease or letting a house or land on an annual tenancy creates no implied engagement on the part of the landlord that the one is reasonably fit for habitation or the other for cultivation; and if this turns out not to be the case, it will furnish no excuse to the tenant for refusing to pay his rent. Although, however, the law implies the covenants we have mentioned, with, perhaps, some others, this implication is never trusted to. Every lease contains a number of express covenants, which have the effect of utterly abrogating any cove-

nants which the law might otherwise imply on the points to which they relate. The covenants (or some of them) usually inserted in the lease of a house are,—*on the part of the lessee,* to pay rent; to pay rates and taxes, except the landlord's property tax; to repair the premises; to insure against fire; not to assign or underlease without license; not to carry on offensive trades, &c.: and *on the part of the lessor,* to secure the lessee in the quiet possession of the demised premises. We shall not here enter into any discussion of the rights and liabilities conferred or incurred by these covenants, for they will be more conveniently considered under the heads of law to which they relate, and which will be treated of in the subsequent parts of the work. We need only remark further, on the subject of covenants, that some are said to be *real,* and "to run with the land," while others are merely personal, and do not run. When we speak of "running with the land," we mean, that whatever parties shall, during the continuance of the lease, become possessed respectively of the "reversion" (*i. e.* the interest of the landlord), or the "term" (*i. e.* the interest of the tenant), there shall subsist between them the same rights and liabilities under the covenant as subsisted between the original lessor and lessee. All implied covenants run with the land, and so do all express covenants which directly relate to or concern the subject-matter of the lease. Other covenants follow the general law of contracts, and create no rights or liabilities, except between the original parties to them. This portion of our subject

will, however, be more conveniently explained when we come to deal with the methods by which the parties to a lease may be changed, and the consequences of such a change.*

Lastly, we have the *exceptions* out of the demise—such as trees in a farming lease, and mines in a mining county; and the *provisoes and conditions*. The terms "proviso" and "condition" are synonymous, and signify some quality attached to a real estate by virtue of which it may be defeated, enlarged, or created, upon the happening of an uncertain event. Those inserted in leases are most commonly framed for the purpose of enforcing the due payment of the rent reserved, and the performance of some or all of the lessee's covenants, or for restraining the lessee from assigning or underletting the premises. The method of doing this is by declaring the lease void, or giving the landlord a right to re-enter upon the premises, in case of certain breaches of covenant. We shall, therefore, postpone what we have to say about them until we treat of the modes by which a tenancy may be forfeited.†

Memorandums, adding to or varying the provisions of the deed, are sometimes endorsed on leases. If they are endorsed before the execution of the lease, they are considered as an integral part of it, and require no additional stamp. If added afterwards, such a memorandum is to all intents a new instrument, and must be stamped and executed accordingly.

It is not unusual—particularly where a landlord

* Page 117. † Page 122.

leases or lets a furnished house (in which case he has no means of enforcing his rent by distress), to take from the lessee, and also from a surety, a bond for the performance of the covenants or stipulations, and for the payment of the rent reserved. A form of such a bond, applicable to all kinds of lettings, will be found in the Appendix, p. 173.

CHAPTER III.

TENANCIES FROM YEAR TO YEAR.

If one man, either by word of mouth or by writing, let to another houses or lands, at a yearly rent and for an undefined time, a tenancy from year to year will be created, unless the letting is accompanied by some stipulations to the contrary. Probably nine-tenths of the houses in England are held on this tenure, the essence of which consists in this;—that a tenant having entered into possession of premises is entitled to hold them and liable to pay rent for them for a twelvemonth; and that if *the requisite notice* to determine the tenancy at the year's end be not given by either landlord or tenant, another year's tenancy is thereby created; and so on from year to year, until such notice (expiring on the anniversary of the day on which the tenancy first commenced) shall have been given by either party. The day on which the tenancy commences is either a day named at the time of letting; or if no day is named, the day on which the tenant enters. In the absence of any other agreement, *the requisite notice* is one of six months, terminating, as we have already said, on the anniversary of the day when the tenancy began. But it may be arranged that the notice shall be a quarter's

or a month's, or, in fact, any other, without altering the character of the tenancy, so long as such notice must still expire at the termination of some yearly period. If, however, it is expressly agreed that the tenant shall *always* be subject to quit at six month's, or at a quarter's notice *"to be given him at any time,"* this will constitute a half-yearly or a quarterly tenancy.*

Although a yearly tenancy may be created verbally, this should never be attempted, because, previous to the entry of the tenant it would be a mere "agreement for an interest in land;" and as this is by the statute of frauds void if not in writing, a landlord would have no remedy for breach of contract, if the person to whom he had let refused to take possession of the premises.

It is not the practice to insert stipulations of the nature of covenants, in agreements for this description of tenancy; but the law implies, on the part of the landlord, a promise that the tenant shall peaceably enjoy the demised premises free from interruption by himself, or by any one claiming to be entitled through him, or even claiming *rightfully* against him. If a tenant is evicted by any one of these, he may not only refuse to pay any rent accruing due after the eviction, but may bring an action against his landlord for damages arising from the loss of his holding. If he is evicted or disturbed by a mere wrong-doer, of course his remedy is against him, and him alone.

* With respect to notices to quit, see chapter xiv.

The landlord of an *unfurnished* house, in letting it on a yearly tenancy, does not, any more than in granting a lease, warrant it as fit for habitation. In whatever state it may be, if the tenant once enters or signs an agreement to take it, he is without redress, unless he have previously obtained the landlord's *written* agreement to put it in repair. Even if the house were to tumble down he might be compelled to pay rent, until he had released himself by giving a regular notice. The agreement on the part of the landlord to make repairs, should mention a fixed time by which they are to be done.

Contracts for the letting of a *furnished* house, whether for a term or from year to year, or for a less period (and the same is true of furnished apartments), are, however, contracts of a mixed nature, partaking partly of the character of a demise of real property, and partly of that of a contract for the letting and hiring of movable chattels; and the lessor, therefore, in contracts of this description, is clothed with the duties and responsibilities arising from contracts for the letting and hiring of chattels in addition to those flowing from demises of realty simply. There is, consequently, an implied warranty, on the part of the lessor, that such ready-furnished house or lodging is reasonably fit for habitation or occupation by a tenant; and if the furniture is unfit for use, or is encumbered with a nuisance of so serious a nature as to deprive the tenant of all beneficial employment of it, the latter is entitled to throw up both house and furniture, and bring an action

against the landlord for breach of contract. The fact that the beds of a ready-furnished house were so overrun with bugs that they could not be slept in, has in one case been held a nuisance of such a character.*

A tenant from year to year sometimes underlets the premises (as he has a perfect right to do), either because he wishes to leave them before the expiration of the proper notice, or for the sake of making a profit-rent. In that case, a person coming in as under-tenant must satisfy himself that the rent to the superior landlord, and also the queen's taxes and the sewers'-rate, have been paid up, for he will be answerable for any arrears.

No new tenancy will be created by an agreement for the increase or diminution of the rent, entered into in the middle of the year, half-year, or quarter.

It is not unfrequent to let houses "for one year, and so on from year to year." In that case the tenant must retain the house for at least two years. He cannot give notice to quit until six months before the expiration of the first year of the tenancy from year to year, which in this case in effect follows a term certain of one year.

A tenancy from year to year presumptively arises when a tenant coming in under an agreement for a lease has made a payment of rent; unless, indeed, the payment can be explained by either party in such a way as to rebut the presumption. Of course this is

* Addison on Contracts, page 418.

independent of the right which in the Court of Chancery such a party has to a lease, as we have already explained.*

If a tenant, under a lease for a term of years, holds over after the expiration of his term, he is, until he has paid rent subsequently falling due, merely a tenant by sufferance, and may be evicted at any moment; but directly he has paid, and the landlord has received any such rent, he will be considered a tenant from year to year, and must give, and is entitled to receive, a proper notice to quit.

The various incidents of a tenancy from year to year will be found more fully treated in subsequent chapters, and we have inserted in the Appendix appropriate forms for such a letting.†

* See page 16. † See Appendix, page 155.

CHAPTER IV.

TENANTS FOR A SHORTER TERM THAN A YEAR, INCLUDING LODGERS.

If premises for the purpose of business, houses, or apartments, are let for an indefinite period at a rent calculated in reference to a shorter period than a year—as for instance, at so much per quarter, month, or week—the hiring will be construed as quarterly, monthly, or weekly, in the absence of any circumstances or of the custom of any part of the country to the contrary. As so many of our countrymen annually take lodgings in France, it may not be irrelevant to mention that the French law is in this respect the same as our own.

The caution which we gave * with respect to taking underleases must be repeated with respect to the hiring of furnished apartments. Any goods taken upon the premises by the lodger will be liable for rent and taxes; and where a lodger has much valuable property, he ought to satisfy himself previous to entering that these have been and are likely to be duly paid by his landlord.

Lodgers have in general the same rights, and are subject to the same liabilities, as other tenants. They

* See pp. 17 and 26.

are, in fact, with some qualifications to which we shall allude, merely tenants of a different kind of holding and for a shorter period than tenants from year to year of a house; but they are not tenants of a different kind. The law as to the payment of rent by a lodger, as to distress upon his goods, and as to the remedies against him for refusing to give up possession, are the same as in the case of a tenant of a house or lands. As a contrary impression seems to be rather prevalent, it may be as well to state, that although an inn-keeper has a right of lien* upon, and may detain, the goods of a guest for his bill, the keeper of furnished apartments has no such lien, and cannot, without effecting a regular distress,† detain the goods of his lodger until he has paid the rent. It must be borne in mind that each set of apartments in a house with a common outer door does not constitute a separate tenement, with reference to the landlord's right to distrain; for he has a perfect right to break open any of his lodgers' doors to seize and execute distress on his goods.

The law with respect to notices to quit, is much more settled in the case of yearly tenants than in that of tenants for periods of less than a year (including lodgers). In the former case, the law, without evidence of express contract, or of custom, implies an agreement

* *Lien* is the right which one man has to retain possession of the property of another, until some pecuniary claim has been satisfied.

† As to which, see page 49. No distress can, of course, be made until rent is actually *due* and in *arrear*.

for six months' notice. In the latter case, it seems doubtful whether the law will imply an agreement for any notice at all. If, however, there is in the locality where the premises are situated an established usage, with respect to notice, the law will take cognizance of that, and incorporate it with the contract. And the practice is now so well established, with respect to most of these short hirings (at any rate with respect to the monthly or weekly letting of apartments), that it may safely be said that in general, if the hiring be from half-year to half-year, half a year's notice must be given; if from quarter to quarter, a quarter's notice; if from month to month, a month's notice; and if from week to week, a week's notice; and that if a lodger quits his apartments without giving such notice, he must pay from six months' to a week's rent, according to the hiring. Landlords seeking to enforce such notice ought, however, always to be prepared with evidence to show the existence of a custom. Of course no notice is required where a tenant or lodger takes premises or apartments for a certain term, and quits at the expiration thereof. And, on the other hand, there is no question (whatever may be the law as to notice in these cases) that a party who enters on a fresh week, month, &c., will be bound to remain till the termination of it, or at any rate to pay rent for it.

The mere putting a bill in the window to show that the apartments are to let, or lighting fires in the rooms, will not prevent a landlord from recovering the rent from a tenant who has quitted without notice, where

such was necessary. But if he let them, no matter for how short a time, he cannot claim any subsequent rent, although the apartments may afterwards have become and remained vacant during a considerable part of the time that would have been included in a proper notice.

We have already mentioned * that a tenant of furnished apartments may quit them without any notice, if the furniture is unfit for use; but a fear, however well grounded, that his goods may be seized for the superior landlord's rent, will not similarly excuse him.

When lodgings are let in a house it is implied, unless agreed to the contrary, that the tenant should have the use of those domestic conveniences which are attached rather to the house itself than to any particular part of, but which are indispensable to the use of any rooms in, it as a residence. Amongst these are the skylights and staircase windows, the watercloset, the door-bell and the knocker. The tenant, if deprived of the use of any one of these while his tenancy continues, has an action for the breach of contract. But a lodger cannot insist upon having his name painted on the outer door, or on affixing thereto a door-plate.

As the keeper of a lodging-house has the general possession and government of it, he is bound, for the protection of the persons and property of the lodgers, to take such precautions against fire and robbery as may reasonably be expected from a prudent householder. He will be liable, if they incur loss in conse-

* See page 25.

quence of the doors not being properly secured at night; or of improper or doubtful characters being permitted to assemble at late hours; or from any want of care on his part in the selection of honest and competent servants. There is at present great doubt as to the extent of his responsibility when, after he has exercised such care, the goods of the lodger have been stolen in consequence of the negligence of a servant. In the recent case of *Dansey* v. *Richardson*, 23 L. J. Q. B. 217, the Court of Queen's Bench were equally divided upon the point, Lord Campbell and Coleridge J. being of opinion that he was, and Erle and Wightman J.J. that he was not, liable.

If a lodger merely have the use of the furniture in his apartments, the landlord retaining possession of them, and looking after and taking care of them by his own servants, the tenant is only bound to use them himself, and to see that his family and guests use them in a reasonable manner. If—as is sometimes the case in apartments, and most frequently where a furnished house is taken—the tenant brings in his own servants, and has not only the use but the possession of the furniture and household utensils, he will be bound also to see that their care and preservation is properly attended to, and to return them at the expiration of his tenancy in good order and condition, deteriorated only by ordinary wear and tear and reasonable use. If such a tenant receive plate, linen, &c., and agree "to leave them as he found them," he must return them cleaned, if he received them in that state.

It must be remembered, that an agreement for the letting of lodgings is a contract for an interest in land within the statute of frauds, and that unless it is reduced to writing no action can be maintained upon it against a person who has agreed to take apartments, but has never entered and taken possession of them, and has refused to pay the rent agreed upon.

A lodging-house keeper has no right to eject by forcible means, or with the aid of a policeman, a lodger who insists on remaining after the conclusion of his term, or the expiration of a proper notice to quit. But he will, in such a case, be justified in taking advantage of his tenant's temporary absence to fasten up the doors of his apartments, and to prevent his returning to them. He must, of course, in that case, be ready to deliver to the tenant on his return any property which he has left there.

And if a lodger desert his apartments without paying his rent, and leave property there, the landlord will be perfectly safe in selling it, and applying the proceeds to the discharge of the rent, after giving the owner sufficient—say a fortnight's—notice of his intention to do so, by public advertisement. But the landlord must take care to have very good grounds for believing that the lodger has really deserted the premises, and left his goods, and that he has no intention to return and reclaim them.

For information as to methods of compelling the payment of rent, or recovering possession of apartments by legal procedure, see chapters VII. and XVI.

Forms of agreement for the letting of apartments and of small tenements for terms less than a year will be found in the Appendix (pp. 165 and 166).

Tenancies strictly at will come properly within the division of the subject of which we are at present treating. They arise where a party is let into possession of land on the terms that he is either compellable to leave at the will of his landlord, or entitled to go at his own pleasure. Such a tenancy is hardly ever created now, and we shall therefore merely notice its existence. It may subsist for a short time under peculiar circumstances—such as where a purchaser enters into possession on the execution of the contract of sale, and before the execution of the conveyance to him. But even at law the payment and acceptance of rent is sufficient to convert it into a tenancy from year to year; while, in the Courts of Chancery, a purchaser under a valid contract of sale is regarded as the true owner.

Still less need we, in a work of a purely practical character, do more than mention what is called a tenancy by *sufferance*. This is the term used to designate the relation which subsists between a landlord and tenant when the latter holds over after the expiration of his term without the assent, but also without the express dissent, of the former. It is the lowest tenancy known to the law, and as it is, in fact, little more than a fiction invented to support a legal doctrine which is now exploded, not much will probably be heard of it in future.

Before concluding this chapter, it may perhaps be as well to refer to one or two cases where it is sometimes erroneously supposed that a tenancy and the relation of landlord and tenant have arisen. A servant in the occupation of a cottage of his master's, and receiving less wages on that account, is not a "tenant." If the occupation of the cottage formed a part of his stipulated remuneration when he entered his employer's service, he will be compellable to leave both cottage and employment by the same notice. If, on the other hand, by a subsequent arrangement, it was agreed that such occupation should be equivalent for so much wages, and no time was fixed for the continuance of the arrangement, either party may put an end to it, at any time, by giving what under the whole circumstances of the case may be considered reasonable notice.

Officers or servants of the Government *permitted* to occupy premises belonging to the Crown, as part remuneration for their services, may be considered tenants within the meaning of the Reform Act (that is, for the purposes of the parliamentary franchise only); but not even in this limited sense, if they are *required* to do so for the more efficient performance of their duties.

CHAPTER V.

STAMPS.

THE stamps on leases are now regulated by the Acts 55 Geo. III. c. 184; 13 and 14 Vict. c. 97; and 17 and 18 Vict. c. 83. By the first Act every lease *not otherwise* liable to duty must have a stamp of £1 15s., provided that the number of words in the lease or in any schedules attached to it does not amount to 2160 words; but if it contain with the schedules, &c., that or a greater number of words, then in addition to the £1 15s. duty, there will be a duty of 10s. for every entire quantity of 1080 words contained therein over and above the first 1080 (by 13 and 14 Vict).

But where, as usual, leases are granted *at a yearly rent*, the following duties will be payable * provided the term does not exceed thirty-five years in duration, and there is no fine:—

	£	s.	d.
When the yearly rent shall not exceed £5 . .	0	0	6
And when the same shall exceed £5 and shall not exceed £10	0	1	0
Exceeding £10 and not exceeding £15 . .	0	1	6
Exceeding £15 and not exceeding £20 . .	0	2	0

* The rates in this and the following table only cover instruments of less than 2160 words; when they contain more words, a *progressive* duty, for which see page 38, must be added.

	£	s.	d.
Exceeding £20 and not exceeding £25 . .	0	2	6
Exceeding £25 and not exceeding £30 . .	0	5	0
Exceeding £50 and not exceeding £75 . .	0	7	6
Exceeding £75 and not exceeding £100 . .	0	10	0
And when the same shall exceed £100, then for every £50, and also for every fractional part of £50 .	0	5	0

Leases for a less period than a year are now subject to the stamp duty which would be chargeable on a lease at a yearly rent equal to the sum actually reserved by way of rent for the shorter time for which the premises are let.

If the term of years for which a lease is granted exceeds thirty-five, then the following *ad valorem* duty will be payable in respect of the rent reserved:—

	If the term shall not exceed 100 years.			If the term shall exceed 100 years.		
	£	s.	d.	£	s.	d.
When the yearly rent shall not exceed £5	0	3	0	0	6	0
And when the same shall exceed £5 and not exceed £10	0	6	0	0	12	0
Exceeding £10 and not exceeding £15	0	9	0	0	18	0
Exceeding £15 and not exceeding £20	0	12	0	1	4	0
Exceeding £20 and not exceeding £25	0	15	0	1	10	0
Exceeding £25 and not exceeding £50	1	10	0	3	0	0
Exceeding £50 and not exceeding £75	2	5	0	4	10	0
Exceeding £75 and not exceeding £100	3	0	0	6	0	0
And where the same shall exceed £100, then for every £50, and also for every fractional part of £50 . . .	1	10	0	3	0	0

If a lease is granted on *a fine* only, it will be charged as if it were a conveyance; and if partly on fine and partly at rent, then it will be charged as a conveyance in respect of the fine, and at one of the rates above mentioned in respect of the rent.

If a lease contain 2160 words, or upwards, then for every entire quantity of 1080 words over and above the first 1080, the following "progressive" duty will be charged in addition to the above "*ad valorem*" duties, (that is to say) where such deed or instrument shall be chargeable with any *ad valorem* stamp duty or duties, not exceeding on the whole the sum of 10s., a further progressive duty, equal to the amount of such *ad valorem* duty or duties; and in every other case, a further progressive duty of 10s.—When a lease is liable to *ad valorem* duties it is, of course, not necessary to impose a £1 15s. stamp.

An agreement for the letting of houses and land (not amounting to a lease or actual demise) must, like other agreements, when the subject-matter thereof is of the value of £20, have a stamp of 2s. 6d. if it contain less than 2160 words; if it contain that or a larger number, then it must have a 2s. 6d. stamp for every entire quantity of 1080 words which it contains. Where any letters are offered in evidence to prove an agreement between the parties, it will be sufficient if any one of the letters be stamped with a duty of £1 15s. Agreements may be stamped within fourteen days after date without penalty; but afterwards only on payment of a penalty of £10.

The stamps on appraisements, when the amount of the valuation does not exceed £50, must be 2s. 6d.; if it exceeds £50 but not £100, 5s.; if it exceeds £100 but not £200, 10s.; if it exceeds £200 but not £500, 15s.; and if it exceeds £500, £1.

A memorandum of the sale of fixtures must be stamped as a conveyance, *i. e.* there must be a 2s. 6d. stamp for every £25 of purchase-money.

A bond conditioned for the payment of rent and performance of covenants in a lease is sufficiently stamped with a £1 15s. stamp, as a bond "not otherwise charged."

Duplicates or counterparts of any instrument chargeable with any stamp duty or duties whatever, when such duty (exclusive of progressive duty) shall not amount to 5s., are liable to the same duty as on the original instrument, including "progressive" duty, if any; where the duty on the original instrument (exclusive as above) amounts to 5s., then the duplicate or counterpart must have a 5s. stamp, with a further progressive duty of 2s. 6d.

Leases of houses, the rent of which does not exceed £5, are exempt from stamp duty.

Schedules, inventories, &c., of fixtures or furniture, *referred* to in, but not being part of or annexed to, an agreement or lease, will (where these instruments are subject to a stamp duty not exceeding 10s. exclusive of progressive duty) be charged the same duty as on the principal instrument. But if the duty on the lease or agreement is 10s. or more, exclusive of progressive

duty, then the duty on the schedule will be 10s. In any case, when the schedule contains 2160 words or more, it will also be liable to a progressive duty (charged as above) of the same amount as the simple duty.

It should be remarked that instruments are not absolutely void for want of a stamp. The statutes merely enact that the instrument shall not be admissible in evidence in law or equity, unless properly stamped.

CHAPTER VI.

OF RENT.

RENT is a compensation or return either in money or other articles yielded or paid at fixed periods, and to a certain amount out of the profits and in respect of the occupation of houses and lands by the tenant thereof.

Formal and technical words are generally employed in the reservation of rent in leases and agreements, but there is no magic in these; any expressions declaratory of an intention that rent shall be payable, is sufficient. It is essential, however, to constitute a rent for which distress may be made, that it should be reserved at a sum certain, or that means should be given whereby it may be reduced to a certainty: and also that it should be made payable at fixed times. Thus where a marl pit and brick mine were let, and the tenant agreed to pay so much a quarter for every yard of marl that he might get, and also so much for every 1000 bricks that he might make, this was held sufficiently certain. If a rent of so much "per annum," or, an "annual rent" of so much, is reserved (nothing being said about the time or times of payment), it will be payable once a year, on the anniversary of the commencement of tenancy. But where a rent was reserved "*after the rate*

of £18 per annum" this was held too indefinite both as to amount and time of payment. It is usual to make the rent payable either quarterly or half-yearly on all or two (specified) usual quarter-days, viz. the 25th March, 24th June, 29th September, 25th December.

Rent must be reserved to the lessor himself, not to a third party. However, where there is a reservation to a stranger, either in a deed or written agreement, although the sum reserved is not a rent properly so called, and *cannot be distrained for*, it may be recovered by an action on the contract.

After the death of the original landlord or lessor, the rent will be payable to his heir-at-law if he had the fee simple; but to his executors, if he had only a lease.

Rents of whatever kind—including rent-charges, fee-farm rents, and chief rents—are now recoverable by distress.

Whatever covenants or provisions a lease or agreement may contain, the tenant incurs no liability to pay rent until he has been put into possession or has been tendered and afforded the opportunity of taking possession of the demised premises.

The landlord is not entitled to distrain until he or his agent has demanded his rent on the premises, which he is not entitled to do until after midnight of the day on which it is made payable by the lease or agreement. But it must be observed that a demand made at the time of the distress being put in is sufficient, if that is after the day on which the rent is payable. It is not necessary that any demand should be made upon tenants of

the Crown. They must pay their rent into the exchequer on the proper day.

Should the lease, as is generally the case, contain a proviso enabling the landlord to re-enter and recover possession if the rent is not paid on a specified day, then on that day (according to the language of the proviso) the landlord must demand, or the tenant be prepared, to tender such rent on the premises before *sunset*.* A tender must always be of coin or Bank of England notes.

If there is in the lease a *covenant* for the payment of the rent at a fixed day, then if no particular place for the payment is mentioned, it is the duty of the covenantor (the tenant) to seek out the person to whom the rent is to be paid, and to pay, or tender it upon the appointed day. If this is not done the landlord may forthwith bring an action for the rent.

When the rent is paid in cash, the payment must be made in accordance with, and is subject to, the ordinary rules which prevail between debtor and creditor. It may be made either to the landlord or to his authorised agent. And if the landlord have once authorised the tenant to pay his agent, he cannot, by any subsequent revocation of that authority, invalidate any payment of rent made by the tenant to the agent before the former has notice of such revocation. A remittance by post would be a sufficient and conclusive payment, whether it came to the landlord's hands or not, if sanctioned expressly by the landlord in

* See further on this point, chapter xiv.

that particular instance, or impliedly by the previous usage of the parties. And the tenant would have a right to tender for signature, a receipt which, if the rent amounted to £2 or upwards, must bear a penny stamp.

Where, however, a bond, bill of exchange, or promissory note, is given and accepted in payment of rent, the effect is very different from what it would be in ordinary cases. If, in regard to a simple contract debt—as, for instance, for goods sold and delivered—the creditor, instead of requiring immediate payment of a debt due to him, accepts a bill of exchange or promissory note, payable at a future day, his right to sue for the original debt is suspended until the bill or note is due, and then revives if the bill or note is unpaid. Rent, however, being considered a debt of a higher nature than even those due upon instruments under seal, and therefore in a still greater degree than bills and notes, the right to enforce it cannot be suspended by them. And hence, although a landlord may take a security by deed, or a bill or note payable at six months' date, that will not interfere with his right to distrain next day if he please.

If a tenant, in order to protect himself, pay charges which are, in fact, due from his landlord, but which are fixed upon the premises he holds, and may be distrained for there, he can, in settling with his landlord, claim to have such payments taken as on account of, and in deduction of, his rent, and may decline to pay any rent until he is fully reimbursed. Amongst such

payments are ground-rents, rent due from the immediate to a superior landlord, when the tenant actually in possession is only an under-lessee, land tax, landlord's income and property tax (even if accruing during the time of a previous tenant), tithe rent-charge, and any charge for compensation of manorial rights. The tenant, however, must be careful to deduct or set-off these payments against the next rent that becomes due after they are made.

This may, perhaps, be the most convenient place to mention, that rent paid by a bankrupt after the act of bankruptcy, in order to avoid a distress, is a protected payment, and cannot be recovered by the assignees.

It sometimes happens that a person, who has a mere life estate in lands, grants a lease for years. Except in the case of farms and lands let for cultivation, such a lease determines upon the death of the lessor; but his executors are entitled to recover a portion of the annual rent reserved, in proportion to the time which elapsed from the last payment of rent till his death. The tenant of a farm is, under a recent statute, empowered to retain possession until the expiration of the current year of his tenancy; and while the executors of the last landlord take the rent up to the day of his death, the succeeding landlord takes for the residue of the tenant's occupancy. A similar apportionment is made when a lessee, for a term of years determinable on the falling in of lives, makes an under-lease for a term of years certain,

which is still subsisting at the expiration of the lease on which it is dependent.

When a portion of lands or premises is taken under an Act of Parliament for any public undertaking, it is provided by the Lands Clauses Consolidation Act (8 and 9 Vict., c. 18, s. 119) that, if the parties disagree, two justices may apportion the rent and fix the amount to be paid by the tenant for the part of his holding which is left to him.

If a tenant be evicted from any part of the demised premises by the landlord, or any one claiming through him, the whole rent will be immediately suspended, and nothing will be payable for the interval that elapsed since the last day (quarter-day or otherwise) on which rent was payable.

But if the tenant be evicted from a part only of his land by one rightfully claiming by title paramount to or against his landlord, the rent will be apportioned, and so much only as may be considered fairly applicable to the part in question will be suspended.

But a mere entry by the landlord, if permitted by a covenant, and even a trespass by him, or a trespass by a stranger, will not suspend the rent. In the two latter cases the tenant will, of course, have his remedy by action of trespass against the wrong-doer.

A tenant from year to year, or a lessee who has covenanted without qualification to pay rent during his term, will not be relieved from liability if the house be wholly destroyed by fire. The same liability has been

held to continue in the case of a tenant from year to year of a second floor, occupied under a parol agreement. And the occupant of furnished lodgings, let quarterly, has been held liable to pay rent, at all events up to the time of the fire. Of course a tenant from year to year may relieve himself by giving a proper notice to quit; but a lessee for a term certain, with a general covenant, must pay during the remainder of his term. Even if he have covenanted to pay rent, and also to repair except in the case of the premises being burnt down, and the landlord refuses to rebuild after notice, this will make no difference. He ought to protect himself by an express proviso in his lease for the suspension or abatement of rent in such a case.

A lessee under a deed containing the usual covenant on his part to pay rent, and a tenant from year to year under an agreement, may both, in the absence of any stipulation to the contrary in such deed or agreement, assign their interests thereunder. But unless the first tenant's interest has been surrendered up to the landlord, and accepted by him, such first or original tenant will still continue liable for rent, notwithstanding the assignment. A tenant from year to year who wishes to get rid of his holding, and does not seek to gain a profit rent on the re-letting, will therefore find it best to make an arrangement with his landlord, by which the new tenant should be accepted in his place, and undertake his responsibilities. This arrangement should always be carried out in writing, as we

shall show in a subsequent chapter, when we come to treat of the manner in which tenancies may be determined.* The assignee of a tenant is, in any case, only liable for rent while in possession of the premises.

A tenant will remain liable for rent unless at a time when he is entitled to do so he deliver up complete possession of the premises; or (where there is no covenant) the landlord accept another in his stead; or, after the tenant has abandoned the premises, the landlord let them again. In the last case, however, the former tenant will be liable for rent up to the time of such letting.

* See chapter xiv.

CHAPTER VII.

OF DISTRESS, AND OTHER MEANS FOR THE RECOVERY OF RENT.

DISTRESS, so far as we are here concerned with it, is the taking by the landlord—without any legal process—of personal chattels found upon the demised premises, for the purpose of obtaining payment of rent due to him, and in arrear.

No more than six years' arrear of rent are recoverable by distress; unless within that time the tenant have given a written acknowledgment of previous rent being due.

A distress may now be made for all kinds of rent, as we mentioned in the last chapter. It may even, though a popular notion is sometimes found to the contrary, be levied for the rent of furnished apartments upon such goods and chattels of the tenant as may be found there. For, although there is here a combined letting of an interest in real property, and a hiring of chattels, yet, in contemplation of law, the whole rent issues out of the realty.

A bond, bill of exchange, or promissory note, given by the tenant, and accepted by the landlord, on account of rent, will not suspend the right of the landlord to

distrain, unless he obtain *judgment* upon such instrument. In that case he loses his right to distrain for so much of the rent as is comprised therein. If when the landlord or his bailiff come to distrain, the tenant pay or tender the arrear, it must be accepted without costs. Indeed, if at any subsequent part of the proceedings, before impounding, the tenant tender the rent, with the costs incurred up to that time, he will be entitled to an action against the landlord, should the latter choose to proceed with the distress. To make a tender good there must be an actual production of the money due, in coin * or Bank of England notes, and an unconditional offer of it to the landlord or the bailiff making the distress. The warrant of distress confers upon the bailiff an authority to receive the rent, and even if the landlord has expressly forbidden him to do so, this will not deprive the tenant of the benefit of a tender.

The fact of a tenant having a debt due to him from his landlord to an equal or greater amount than his rent will not prevent the latter distraining, unless there has been an express agreement that the two demands should be set off against each other.

WHO MAY DISTRAIN.

No distress can be made unless there is an actual demise or letting at a fixed rent. If, for instance, a tenant has entered into possession under a mere agreement for a lease, and continues to occupy without ever

* Silver is not a legal tender for sums above 40s.

having paid any rent, or made any admission of a specific sum being due as rent, in respect of such occupation, the landlord has no right to distrain. But, so soon as by payment of rent, or by such an admission, a tenancy from year to year can be implied, the landlord may distrain for all rent subsequently coming due. Where the landlord has given a notice to quit, and the tenant holds on after its expiration, the landlord cannot distrain for rent subsequently accruing due unless something has been done to show that a new tenancy has been created. In order that a landlord should, *without express agreement*, have the right to distrain, he must be the owner of the immediate reversion in the land—that is to say, he must be entitled to the land when the tenant's interest has been determined either by the expiration of his term, or by notice to quit. But a reversion, however short, is sufficient for this purpose: and even where there is no reversion in the person entitled to the rent, a right to distrain for it may be created by express stipulation. Thus if a lessee for years grant an under-lease of all but the last day of his term—or, if while assigning the whole of his term on a rent, he expressly reserve a right of distress to himself—he will be able to distrain for any rent which he may reserve; and it is well settled that a tenant from year to year, who underlets from year to year has a sufficient reversion to distrain. In the absence of a reversion, or an express power of distress, the rent can only be recovered by action. Also, a landlord who has parted with his reversion cannot

distrain even for any rent which accrued due before he did so, from a tenant in possession. The arrears pass with the reversion. To this, indeed, there is one great exception. By the 3rd & 4th Wm. IV. c. 42, ss. 37, and 38, it was enacted "that the executors or administrators of any lessor or landlord may distrain upon the lands demised for any term or at will, for the arrears of rent due to such lessor or landlord in his lifetime, in like manner as such lessor or landlord might have done in his lifetime;" and "that such arrears may be distrained for after the end or determination of such term or lease, at will, in the same manner as if such term or lease had not been ended or determined; provided that such distress be made within the space of six calendar months after the determination of such term or lease, and during the continuance of the possession of the tenant from whom such arrears become due." An executor may distrain before the will is admitted to probate. A husband seised of lands in right of his wife may, during marriage, distrain for rent due before marriage; and after her death for rent accruing due during coverture. If a mortgagee give notice of the mortgage to a tenant in possession under a lease or a letting, executed or effected *prior* to the mortgage, he may distrain for all arrears of rent in the hands of the tenant at the time of the notice, as well as for what accrues due subsequently to it. Much doubt exists as to the position of a tenant who entered under the mortgagor *subsequently* to a mortgage. It would

seem, however, from the remarks of the editors of the last edition of "Smith's Leading Cases," of which Mr. Justice Willes was one, that the law stands thus: The moment the mortgagee has a right to enter on the mortgaged premises for default of payment of his interest, he has also a right to evict any tenants in possession under leases or lettings subsequent to the mortgage. That being so, such tenants will be justified, *under an actual threat of eviction,* in "attorning" to him (that is, acknowledging him as the landlord), and paying rent to him as such, and, after that has once been done, the mortgagee may distrain upon them. The mortgagee may insist on this attornment. But, on the other hand, as is often the case, he may be content with their merely paying over the rent to him without making any acknowledgment express or implied of his title as landlord. In that case he would not be entitled to *distrain,* though he might *evict,* and the right to *distrain,* if the rent became in arrear, would remain to the mortgagor. If, however, the tenant paid the rent or any part of it to the mortgagee, under the threat of eviction, he would be entitled to have it allowed in account with his landlord, the mortgagor (on the principle referred to in the last chapter*), as money paid under constraint, on account of the landlord, who could not of course levy any distress, or bring any action for rent so long as the amount due did not exceed the payments thus made on his behalf to the mortgagee.

* See page 44.

A landlord may distrain before an act of bankruptcy for the whole amount of rent due by a person who afterwards becomes bankrupt. He may also distrain after the bankruptcy, and even although the messenger is actually in possession of the goods, but in that case (see 12 and 13 Vict. c. 106, s. 129) the distress will not be available for more than one year's rent which accrued due prior to the date of the fiat, or the day of the filing of the bankrupt's petition. If more rent is due, the landlord must prove for it against the estate. A distress for rent accruing due after the fiat or filing of the petition (so that such distress is not made for more than a year's rent) is not, by this Act, rendered invalid, even if put in before the bankrupt obtains his certificate and while the property is in the possession of the assignees; and if the tenant should continue in possession of the premises after he has obtained his certificate, the landlord may then distrain for any arrears of rent, including any unpaid balance of such as accrued due before the bankruptcy.

The provisions of the Acts regulating distress in cases of insolvency are very similar. Distress may be levied *before* the filing of the insolvent's petition for more than a year's rent, even although the goods are not sold until after such petition has been presented. But, by 7 and 8 Vict. c. 96, s. 18, "no distress for rent, made and levied *after* the filing of any petition for protection from process upon the goods or effects of the petitioner, shall be available for more than one year's rent accrued prior to the filing of such petition, but the landlord or party to whom the rent shall be due, shall and may be

a creditor for the overplus of the rent due, and for which the distress shall not be available, and entitled to all the provisions made for creditors by the said recited Act or by this Act." The landlord, however, after the tenant's discharge, under the Act may distrain for rent due before his insolvency. Receivers appointed by the Court of Chancery, and sequestrators appointed to collect the revenue of benefices, may distrain in their own names.

WHAT MAY BE DISTRAINED.

The general rule on this point is, that all chattels and personal effects found on the demised premises may be distrained, whether they belong to the tenant or to a stranger. To that rule, however, there are many exceptions, to which we must now call attention.

1. *Fixtures* are privileged against distress, even although they are what are usually called tenant's fixtures, *i. e.* such as the tenant could remove when he quitted the premises.*

2. *Things, the property of a stranger,* but being upon the demised premises, and in the custody of the tenant, for the purpose of being carried, wrought, worked-up, or managed in the way of his trade. Thus, cloth sent to a tailor's shop to be made into clothes, or old clothes sent to be repaired, yarn sent to a weaver's to be woven, a horse sent to a smith's to be shod, books to a bookbinder's to be bound, a watch to a watchmaker's to be mended, and the like, are not distrainable.

* As to what are fixtures, see chapter xi.

The carcass of a beast which had been sent by one butcher to the shop of another in order to be slaughtered, was held exempt from distress; and similar decisions have been given in the cases of—goods in the custody of a carrier to be carried, articles in the possession of an auctioneer or commission agent to be sold, goods of a principal in the hands of a factor, goods deposited in the course of trade in a public warehouse, or landed on a public wharf. But where goods and chattels of a third party are on the premises and in the possession of the tenant, not being then and there in the course of manufacture or of trade, the exemption does not extend to them. Thus, a horse and a carriage standing at livery at a livery-stable keeper's, brewer's casks left at a publican's until the beer is consumed, a loom lent to a hand-loom weaver, (not being in the use at the time,) have all been held liable. If, however, goods, the property of third parties though on the premises when the distraint is made, are yet in the possession and use of their owners, they are not distrainable. Thus, the landlord has no right to distrain a horse or a carriage tied to the gate or standing in a shed on the premises while the owner makes a morning visit or a business call; nor a boat in a private dock, if at the time in the hands and under the care of the owner's crew, and employed on his business. Goods belonging to a guest at an inn are also absolutely privileged from distress. Cattle pastured in a field for one night on their way to a fair or market are exempt; but cattle on land by way of agisting are liable, and so are cattle stray-

ing on another's land, in consequence of their owner's negligence.

3. *Things in actual use* are also absolutely privileged; —for instance, the horse on which a man is actually riding; the tools with which a man is actually working, &c.

4. *Things in the custody of the law*—as goods and chattels in a pound, or taken by and *remaining in the possession of a sheriff's officer* under an execution. But (by the 8th Anne, cap. 14, s. 1) before goods seized by the sheriff, under an execution, put in by any other person than the landlord himself, can be removed, the *immediate* landlord must be paid either by the sheriff or the execution creditor, one year's rent, if the property is held on a yearly rent and so much remain due *at the time of the seizure.* As soon as the landlord hears that an execution is put in, he ought to give notice (see Appendix) to the sheriff of his claim on account of rent; otherwise, unless he could prove that the sheriff was aware of the arrear he will lose the advantage of this statute.

If the goods on the premises are not sufficient to satisfy a year's rent, the sheriff cannot execute a writ of execution, but must withdraw.

By the 7th and 8th Vict. c. 96, s. 67, "No landlord of any tenement let at a weekly rent shall have any claim or lien upon any goods taken in execution under the process of any court of law for more than four weeks' arrears of rent, and if such tenements shall be let for any other term less than a year the landlord shall not have any

claim or lien upon such goods for more than the arrears of rent accruing during four such terms or times of payment." And by the recent County Court Act (19 and 20 Vict. c. 108, s. 75), it is enacted that the 8th Anne, cap. 14, s. 1, shall not be deemed to apply to goods taken in execution under county courts, but that when goods are taken in execution under the process of a county court, the landlord shall be entitled to claim the rent due, within five clear days from the taking, or before the removal of the goods, by writing under his hand or that of his agent, to be delivered to the bailiff or officer, stating the amount of rent claimed, and the time in respect of which it is claimed. And in case of any such claim being made, the bailiff or officer shall distrain for the amount of such rent, not exceeding the rent of four weeks when the demised tenement is let by the week, and not exceeding the rent accruing due in two terms of payment when the house is let for any other term less than a year, and not exceeding in any case the rent accruing due in one year; as well as for the amount of money and costs for which the warrant of execution was issued under the Act. *But in case the tenant shall replevy,** the execution creditor may, under this Act, sell sufficient of the property seized to satisfy his judgment, and pay the costs of the seizure and sale.

5. *Money*, except it is in a bag, and *articles of a*

* As to the tenant's remedy by replevin, which he has always open to him if he wishes to dispute a distress for rent, see next chapter.

perishable nature, such as fruit, fresh meat, milk, fish, &c.

6. *Animals in a wild state* are not liable to distress. It is still a doubtful point whether dogs are seizable. It seems, however, most probable that the Courts would now hold in the affirmative.

7. *The goods of any ambassador*, or minister of a foreign State, or of his domestic servants.

Besides things which are absolutely privileged from distress, there are others which, in the language of the law, are "conditionally privileged," that is to say, that they must not be taken if there are other goods on the premises sufficient to satisfy the distress. Such are beasts of the plough, and the tools and instruments of a man's trade or profession, as the axe of the carpenter, the anvil of the smith, the loom of the weaver, &c.

And, further, there are also some which, although not distrainable at common law, have been made so by statute. By the 11th Geo. II. c. 19, s. 8 and 9, the landlord is empowered to distrain growing crops of corn and grass, hops, roots, fruits, pulse, or other products; to gather them *when ripe*, but not before; to place them in a barn, on the premises, if possible, and if not, as near as may be; and then (after a week's notice to the tenant, of the place of deposit and intended sale) to sell them, as distresses are usually sold. Growing crops seized under an execution (unlike those seized under a distress) may be sold before they are ripe; but so long as they remain on the land after sale

they are liable, under the 14th and 15th Vict., c. 25, s. 2, to be distrained for rent which becomes due *after the seizure and sale,* provided there is no other sufficient distress. Of course the landlord has, in respect to them, the same right to a year's rent due *before* the seizure and sale, as he has in regard to other chattels, under the 8th Anne, c. 14. It is important to remark, with reference to this class of articles, that the landlord is not obliged to take them before having resort to the things just mentioned as "conditionally privileged."

WHEN A DISTRESS MAY BE MADE.

No distress can be made until the day after that on which rent becomes due; nor between sunset and sunrise; nor after tender of the rent. At common law, no distress could have been made after the determination of the lease or tenancy. But now (by 8 Anne, c. 14, s. 6), if a lease have been determined by lapse of time, or (it is said) a tenancy from year to year, by notice to quit, a landlord may distrain for rent accruing due *before,* within six months *after* such determination, provided his own title to the property still continues, and the same tenant still remains in possession.

WHERE A DISTRESS MAY BE MADE.

Except in the case of the Queen, a landlord can only distrain for rent, upon the premises in respect of which it is payable. To this rule, however, there are some

exceptions. If the landlord coming to distrain see beasts on the premises, but before he can distrain the tenant drives them off, the landlord may follow and take them. A landlord can also distrain the tenant's cattle feeding on a common, the right to use which is attached or "appurtenant" to his holding. And (by 11 Geo. II. c. 19) if a tenant fraudulently *or* clandestinely removes goods from the demised premises to prevent the lessor from distraining them for rent in arrear, the lessor, or his bailiff, or agent, may within thirty days next after such removal take and seize them wherever they may be found, unless they have in the meantime been sold *bonâ fide* to some person ignorant of the fraud. This statute does not apply to the case of a removal of a stranger's goods from the premises; nor to the removal of goods of the tenant (with his assent) by one of his creditors, in satisfaction of a *bonâ fide* debt; nor to the removal of the tenant's goods *before* the day on which rent becomes due. But the Court of Queen's Bench have recently held that goods fraudulently removed on the morning of the day on which the rent becomes due may be followed and seized under the statute. By section 7 of this Act, when goods are fraudulently removed and are placed in any house or place locked up or otherwise secured, the landlord or his agent may, with the assistance of a peace-officer, (and in the case of a dwelling-house, after oath being made before a magistrate of a reasonable ground to suspect that the goods are in it,) break open the house, &c., in the day-time, and distrain the goods,

as if they had been in any open place. The constable to be present may be one specially appointed for the occasion. In the metropolitan district, police constables are empowered to detain carriages removing goods between eight o'clock in the evening and six o'clock in the morning, if there are good grounds for suspecting that the removal is with the view of evading the payment of rent. By section 1 of the 11th Geo. II. c. 19, the tenant, or any person assisting him in carrying away or concealing goods, is to forfeit to the landlord double the value of such goods—to be recovered, where the goods exceed the value of £50, by action of debt; and (by section 4), where the value is below that amount, by summary proceedings before two justices. In the latter case, the justices have the power to commit for six months if the money is not paid, and no sufficient distress can be found.

HOW TO BE MADE.

The landlord must, in the first place, be careful not to distrain for more rent than is due to him; and, in the second, to distrain at one time for the whole of what is due. If, indeed, there has been some mistake as to the value of the goods; and the landlord, having fairly supposed the first distress to be sufficient to realize the whole rent due, afterwards finds that it will only cover a part, he may then distrain again for the remainder. Or if, having put in a distress, he has, at the request of the tenant, agreed to postpone it, and

has withdrawn, he may then distrain a second time. The outer door of the house—except in the case of goods fraudulently removed—cannot be broken open. It is not a breaking to open it by the usual means adopted by persons having access to the building. But when the outer door has once been passed, the inner doors may be forced. And if the landlord and his agent, having been once lawfully in a house, and having begun to make the distress, are forcibly ejected, they may then break open the outer door to re-enter. The distress may be made either by the landlord himself or by an authorised agent called a bailiff. To justify a landlord in calling in a policeman, it must be shown that his presence was rendered necessary by violence or threats. The authority is usually given to a bailiff in writing, by what is called a "warrant of distress."* But if a landlord's agent distrain without his orders, a subsequent ratification of his acts is as effectual as a previous direction. The usual mode of making a distress is for the landlord or his bailiff, having entered, to lay his hand upon, and take hold of, some article of furniture, or other chattel, and declare that he seizes on it as a distress in the name of all the goods in the house. But it will be quite sufficient if, after entry, he announces his intention to take the whole or certain goods named, as a distress. When the seizure has been thus made, the next thing is to draw up an inventory of as many goods as are judged sufficient to

* A form of this document, which requires no stamp, will be found in the Appendix, page 184.

cover the rent distrained for, and also the costs of the distress. A copy of the inventory must then be made; and this, with a notice (usually written at the foot of the inventory)—of the fact of the distress having been made, of the goods contained in the inventory having been taken, of the rent distrained for, and of the day on which the rent and costs must be paid, or the goods "replevied,"*—must be served upon the tenant either personally or by leaving it for him at the house; or, if there is no house, on the premises; or if no person is there with whom a notice can be left, then by sticking it up in some prominent place on the premises.† A witness should be present to prove the regularity of the proceedings. When the distress has been made and the inventory drawn up, the landlord may then remove the goods off the premises to any convenient place of security (of which the tenant must have notice with the inventory), where they are to be "impounded." If, however, the distress consist of cattle, they must not be driven out of the hundred, rape, wapentake, or lathe, in which they are taken, except to an open pound in the same shire, and not more than three miles from the place of distress. A distress is, however, now hardly ever removed from the premises; as, by the 11th Geo. II. c. 19, it was enacted, "that it shall be lawful for any person or persons lawfully taking any distress for any kind of rent to impound or otherwise secure the distress so made, of what na-

* As to replevin, see chapter viii.

† For forms of inventory and notice, see Appendix, pp. 185, 186.

ture or kind soever it may be, in such place or on such part of the premises chargeable with the rent, as shall be most fit and convenient for the impounding and securing such distress." Under this statute the landlord may, even without the tenant's consent, take such part of the premises, or even the whole, as is *necessary* for securing the goods, and place a man in possession of them there. But it has been held that, if it is not necessary to use the whole of the premises for the purpose, he must place the goods distrained in one or more rooms according to the space required, unless the tenant (as he usually does) allows them to remain in their ordinary places. No particular form is now required to constitute an "impounding." As soon as the distrainer has made out and delivered to the tenant, or has left upon the premises an inventory of the goods he has taken, they are "impounded," and this even though no one is left in possession of them. As soon as this is done they are in the custody of the law; and if the tenant retake them, he will be guilty of "pound-breach," and be liable to an indictment, and also to an action for damages to thrice the value of the goods, although the distress may have been wrongful and irregular, and no rent may be in arrear or due. The landlord must not use or consume any animals or things impounded. If he do the tenant will have an action for damages. To this there is, indeed, one exception, rather apparent than real,—the landlord may milk cows which have been distrained, for this is necessary to the preservation of the animals. The

distrainer is also now bound to feed impounded cattle if the owner do not.

THE SALE.

If the tenant, after he has received notice of the distress, do not within five days * pay the rent, with the costs of the levy, or replevy his goods,† the distrainer may (by the 2nd William & Mary, st. 1, c. 5, s. 3), with the assistance of the sheriff or under-sheriff of the county, or a constable of the hundred, parish, or place where the distress was taken, cause the same to be appraised by two sworn appraisers (whom the sheriff, under-sheriff, or constable are authorised to swear), and after such appraisement, may sell the same towards satisfaction of the rent and the charges of the distress and appraisement, leaving the overplus (if any) in the hands of the said sheriff, under-sheriff, or constable, for the owner's use. The distrainer cannot retain possession of the goods on the premises of the tenant for more than five days, together with such further reasonable time as may be necessary for appraising and selling the same, unless he have the express consent of the tenant to such further retention of the goods, and

* The five days are to be calculated inclusive of the last day and exclusive of the day of seizure. Thus if a distress is taken and notice given, on the 1st January, it will not be lawful to sell until the 7th January.

† In order to ascertain whether proceedings in replevin have been taken, a search must be made at the office of the registrar for the county court of the district in which the premises are situated.

occupation of the premises. A delay of this kind frequently takes place when the tenant wishes for further time to enable him to raise money to pay his rent; and, although it is not necessary, it is best that the consent should be in writing.* If the broker or person actually making the distress on behalf of the landlord acts as one of the appraisers, the distress will be rendered irregular. The appraisers need not be professional appraisers, but they must be reasonably competent. They must value every article in the inventory separately, and then endorse the inventory with a signed memorandum of the total valuation. The goods may then be put up for auction, but the appraisers may take them at their own valuation, the law presuming that goods sold at appraised are sold at the best prices. The distraining broker must sign a receipt for the money realised, at the foot of the inventory; and, if the amount received exceed that of the rent and the costs of the distress, the overplus must, as we have already said, be left in the hands of the sheriff, under-sheriff, or constable, for the tenant. At the same time, the appraisement (*i. e.* the original inventory, with the endorsement and detailed valuation, mentioned above) must be stamped; and this stamped appraisement must (if demanded) be given up to the tenant. Goods followed and distrained after a fraudulent removal are

* See a form in the Appendix, p. 187. For form of oath to be taken by the appraisers, and of the memorandum of the oath to be endorsed on the inventory, and of the memorandum of valuation, see p. 187.

to be sold in the same manner as if they had been seized on the premises.

By the 57th Geo. III. c. 93, it was enacted that no person making any distress for rent, where the sum demanded and due did not exceed £20, should take in respect of the distress other costs or charges than those fixed in the schedule of the Act, nor charge for any act unless done. The charges allowed are:—For levying the distress, 3*s.*; man in possession, 2*s.* 6*d.* per day; for the appraisement, 6*d.* in the pound, together with the amount of the stamp; advertisements, 10*s.*; catalogues, sale and commission, and delivery of goods to purchaser, 1*s.* in the pound on the net produce of the sale. When the rent claimed exceeds £20, there is no fixed scale of charges, but they must not be unreasonable. Whatever the amount of the distress, the distraining broker must give a signed copy of his costs and charges to the tenant. And where the distress is for less than £20, any person who is charged more than allowed by the Act may, by action or by summary proceedings before two justices, recover treble the amount of the charges from the broker, or from the landlord if he has personally levied the distress.

Besides the remedy by distress, the landlord has also a right to bring an action for his rent. The form of this varies according to the nature of the instrument by which the rent was reserved. If by a deed under seal, it will be an action of covenant; and if by a written or parol agreement, an action of debt. If a tenant have entered into possession of premises on the understand-

ing that he is to make some compensation for their use, without any express stipulation for the payment of a *certain* rent, then, as we have seen, no distress can be made, but the landlord may bring an action, called an action for "use and occupation," for a reasonable compensation for the occupation. And, indeed, the landlord may perhaps bring such an action even if the occupation were that of a squatter or a trespasser; for, although he might, in such a case, eject the party, it would appear he ought also to have the option of treating him as a tenant, and compelling him to pay for the use of the premises. This is, however, a point on which the law is involved in much doubt. An action for rent, by whatever description of instrument or agreement reserved, may be brought in the county courts, if the rent claimed be less than £50. If, however, the tenant should defend himself by alleging—and by showing the judge that he has *bonâ fide* grounds for so doing—that his landlord's title has expired since the tenancy commenced, the action cannot be entertained by one of these courts; unless, indeed, both parties, or their attornies, in writing, at the hearing of the cause, sign an agreement that the court shall have jurisdiction.

It is usual in leases to afford the landlord, if not a remedy for the payment of rent, at least a protection against the accumulation of arrears, by giving him the power to re-enter, and terminate the lease, if rent be not paid within a certain number of days after it has become due.*

* See last chapter, and also page 123.

CHAPTER VIII.

TENANT'S REMEDIES FOR WRONGFUL AND IRREGULAR DISTRESSES.

If a distress is improperly or illegally made, the tenant has several remedies. As they vary according to the nature of the wrong committed, it will be convenient to treat of them under the three heads of—1, Irregular distress; 2, Excessive distress; and, 3, Illegal distress. In the first two cases there is a tenancy, rent due, and the right to make *a* distress; the error for which the landlord is responsible, and for which the tenant has a remedy, is in the first instance some irregularity in the proceedings; and in the second the unreasonableness of the distress, taken in order to cover the rent in arrear. In the third case there is no right to make any distress whatever.

Before entering into details with respect to the nature and the remedy for wrongs which fall under any of these classes, it may be well to notice that where the rent is under £15, the tenant has in the metropolitan district one summary remedy for any and all of them, by application to a police magistrate. By the 2nd & 3rd Vict. c. 71, s. 39, it is enacted, "That on complaint made to any of the police magistrates, by any

person who shall within the metropolitan district have occupied any house or lodging by the week or month, or, where the rent does not exceed the rate of £15, by the year, that his goods have been taken from him by an unlawful distress, or that the landlord, or his broker or agent, has been guilty of any irregularity or excess in respect of such distress, it shall be lawful for such magistrate to summon the party complained against, and if, upon the hearing of the matter, it shall appear to the magistrate that such distress was improperly taken, or unfairly disposed of, or that the charges made by the party having distrained, or attempted to distrain, are contrary to law, or that the proceeds of the sale of such distress have not been duly accounted for to the owner, it shall be lawful for the magistrate to order the distress so taken, if not sold, to be returned to the tenant on payment of the rent which shall appear to be due, at such time as the magistrate shall appoint; or, if the distress shall have been sold, to order payment to the said tenant of the value thereof, deducting thereout the rent which shall so appear to be due: such value to be determined by the magistrate; and such landlord or party complained against, in default of compliance with any such order, shall forfeit to the party aggrieved the value of such distress, not being greater than £15: such value to be determined by the magistrate."

Of course a tenant entitled to take this summary proceeding need not avail himself of it, but may have recourse to those other remedies which we shall now

proceed to describe under the heads into which we have already divided the subject.

Irregular Distress.—This is where, although a right to distrain exists, the distrainer has been guilty of an irregularity, either in taking such things as are not lawfully subject to distress, or in not conducting himself with propriety in his subsequent disposition of them, or conduct respecting them. For instance, if fixtures are taken—if growing crops are sold before they are ripe—if goods liable to seizure are sold without appraisement—if a landlord, having distrained sufficient to satisfy the arrears of rent, abandons the distress, and afterwards distrains again for the same rent—if a landlord sell goods after a replevin has been granted by the sheriff, and he has had notice thereof—if he turn the tenant or his family out of possession, and retain possession of the premises in which the goods are impounded for an unreasonable time—all these are irregularities, for which a tenant who is aggrieved may bring an action either of trespass or on the case, either in the county or superior courts, according to the damages claimed. If more than £50 is sought to be recovered, the action must be in the superior courts. It must be remarked, that the damages will be confined to the actual injury suffered, and that if an action is brought for an irregularity, from which no real inconvenience or loss has resulted, not only will the jury be directed to return only nominal damages, but the plaintiff will very probably be refused his costs. And

further;—if adequate amends have, in the opinion of the jury, been tendered before action brought, it will not lie at all, and the plaintiff will be mulcted in costs. It is very desirable that these points should be borne in mind, as there is, in London and in many of the larger provincial towns, an inferior class of professional men who are constantly on the look-out for actions of this description, and often mislead unwary plaintiffs into proceedings, the only result of which can be either an adverse verdict, or—if a favourable one—a verdict with nominal damages, and *without costs*.

Even when an irregularity has been committed in levying a distress, it does not follow that an action can be brought against the landlord. He is not responsible for the acts of a bailiff or agent, who has clearly exceeded or departed from his authority — unless, indeed, he has subsequently ratified the very acts done. A landlord, moreover, who does not personally interfere in a distress is not liable for the neglect of the broker to deliver a copy of his charges, fees, &c., according to the statute, 57 Geo. III., to which we have adverted in the previous chapter.

Excessive Distress.—This is where the landlord has distrained the goods and chattels of the tenant to an amount beyond what is fairly necessary to cover the rent in arrear, and the costs of levying the distress. To make a distress excessive, the landlord must, it is obvious, have an opportunity of levying one the value of which is about the amount of the rent in arrear, and therefore if there is only one article on

the premises, the landlord may safely take it, however small his demand; and, however valuable the article, it will not be an excessive distress if its value be nearer than that of any other article there, to the sum in arrear. Neither will an action for excessive distress lie where the excess is trifling; it must be something substantial and obvious. If there has, however, been such an excessive distress, an action on the case will lie, in which the tenant may recover as damages the value of his goods, less the amount of rent due. In considering whether the distress was excessive, the jury will be told to consider what the goods seized would have sold for at a broker's sale.

An action may be brought by either an under-tenant or a lodger whose goods have been taken.

But no action will lie merely on the ground of the landlord or bailiff having *claimed* more rent than was actually due unless the goods *taken* and *sold* were unreasonable in regard to the real arrear; or unless some specific damage resulted from the exorbitance of the claim made—as, for instance, if it could be proved that it deterred the tenant's friends from joining with him as sureties in a replevin bond.

Illegal Distress.—A distress will be illegal if there was no right whatever to make any distress at all. For instance, if there was no tenancy between the distrainer and the person distrained upon; if there was a tenancy, but upon no certain rent; if the tenant was holding over after the expiration of notice to quit on the landlord's part; if the landlord's title had ex-

pired before the rent became due; if no rent was in arrear; or if the landlord's title to it had been barred by the statute of limitations; if the tenant has paid the rent, either on account of landlord's taxes, or under compulsion to a superior landlord, or to a mortgagee;—in all these cases the distress will be wholly and absolutely illegal. Also, if, when the landlord or bailiff go upon the premises to distrain, the tenant tender the rent, that will make the taking, and, of course, all the subsequent steps illegal; if a tender be made after the distress has been taken, but before it is impounded, that makes any subsequent detention illegal; but when the goods have once been impounded, a tender will have no effect, and the landlord may proceed to sale without rendering himself liable to any action, unless, *perhaps*, he has in so doing been actuated by malice.

If an illegal distress has been taken, and the goods sold, the tenant may either bring an action against the landlord to recover back the receipt of the sale; or he may bring an action of trespass, under which, if it is properly brought on the statute, 2nd Will. and Mary, sess. 1, c. 5, s. 4, he may—if no rent was in arrear or due—recover double the value of the goods sold.

When an illegal distress has taken place, the remedy, however, most frequently resorted to is the action of replevin, because, by having recourse to that, the tenant both recovers back his own goods or prevents them being taken away; and also obtains damages for any inconvenience or loss to which he may have been put in consequence of a distress having been levied on his pre-

mises, or his goods having been detained from him. Under the common law, as some of our readers may perhaps be aware, there was no power to sell a distress; it was a mere pledge in the hands of the landlord to secure his rent; and so long as he had security that his claim, if legal, would be duly met, he had no right to more. The tenant was therefore permitted to take back his goods on giving security to the sheriff of the county, either to prosecute successfully an action against the distrainer for the unlawful taking, or, in case the judgment was against him, to pay the rent. This was called "re-plevying" the goods, *i. e.* substituting one pledge for another.

As actions of replevin are generally *brought* in the county courts, and as they may always be, and to a very large extent are there prosecuted to a final termination, we shall give such an outline of the proceedings as will enable any tenant to conduct his own case, unless it is complicated by any legal difficulty or doubt, when, of course, professional assistance must be obtained.

Two fundamental points must in the outset be kept in mind:—that an action of replevin cannot be maintained successfully if there is any rent whatever in arrear and of which no tender has been made; and that it cannot be made the medium either of recovering back any fixtures, or of obtaining damages for their unlawful seizure.

When a tenant wishes to replevy his goods, he must, within five days from the time at which he receives notice of the distress, or—should the distress be not then

sold, as it may lawfully be—at any time before sale, go to the registrar of the county court of the district in which the distress shall have been taken, who, on his giving securities in the manner we shall immediately mention, will cause his goods to be re-delivered to him.

One form of security consists of a bond by the tenant with two sureties (householders) to be approved by the registrar, in such a sum as in the opinion of that officer will cover the rent for which the distress was made, and the costs of the action of replevin; and providing that the tenant will commence an action of replevin against the distrainer and prosecute the same with effect and without delay either in the superior or the county courts.

But the tenant, instead of giving such a bond, may deposit with the registrar a sum of money equal in amount to that for which the bond would be required, together with a memorandum to be approved of by such registrar, and signed by such tenant, his attorney or agent setting forth the conditions on which the money is deposited. The registrar will give a memorandum acknowledging the receipt of this sum; and it will abide the issue of the suit; be returned to the tenant if he is successful, and if he fails, go to the distrainer.

Now an action for replevin may be commenced by the tenant either in the county or in the superior courts, if he have good grounds for believing either that the title to some corporeal or incorporeal heredita-

ment, or to some toll, market, fair, or franchise was in question; or that the rent in dispute exceeded £20. If he can prove neither of these alternatives, he *must* commence the action in the county courts. Of course, the condition of the bond,* or that contained in the memorandum of the money deposit, will vary with the court in which the tenant intends to commence his suit, and submits to be bound to prosecute it without delay and with effect.

If the action is to be brought in the superior court, it must be commenced within one week, and if in the county court within one month from the date on which security is given.

When a party proposes to give a bond, by way of security, he must serve by post, or otherwise, on the opposite party, and on the registrar, at his office, notice of the proposed sureties. The registrar will then give notice to both parties of the day and hour on which he proposes that the bond shall be executed, stating in such notice to the landlord, that if he have any objection to make to such sureties or either of them, it must then be made. At the time appointed the sureties must make an affidavit of their sufficiency, unless the landlord dispense therewith. Notice of the deposit of money in lieu of other security, must also be given to the other party.

When the registrar has granted a replevin he will, if necessary, deliver a warrant to the high-bailiff of the

* See Appendix, page 188, for forms of these bonds.

court, who will restore the goods to the tenant, and will, if necessary, break open both inner and outer doors, to get possession of them for this purpose.

If the five days from notice of distress have elapsed, or nearly so, when the replevin is granted, the tenant should take care that if the distrainer do not know, he should immediately have notice, of the grant, in order that he may be subjected to an action if he afterwards proceed to sell.

Replevin having been granted, the next thing is for the tenant to enter a plaint (if he proceed in the county court) in the usual way. He must at the same time specify and describe in a statement of particulars, the cattle, or the several goods and chattels taken under the distress, and of the taking of which he complains; and he must not forget that in actions of replevin no other cause of action shall be joined in the summons.

If the landlord or distrainer take no steps to remove the case from the county court, it will be tried in the usual way. If the plaintiff succeeds, he retains his goods; his bond or money deposit will be delivered up to him, and he will recover damages for the distress, and costs in the action of replevin. If the defendant succeeds, he has a right to require the judge, if the case be tried without a jury, and the jury, if the case be tried with a jury, to find the value of the goods distrained. And then, if the value be less than the amount of rent in arrear, judgment will be given for the amount of such value; but if the amount of the rent in arrear be less than the value so found, judgment will

be given for the amount of such rent, and may be enforced in the same manner as any other judgment of the court.

An action of replevin commenced by a tenant in a county court may be removed by the landlord, by writ of certiorari, into a superior court, on his undertaking to show to such court that he had good reason to believe that the title to real property was in question, or that the rent in respect of which the distress was taken exceeded £20.

There is an appeal from the county to the superior courts in all cases where the amount of rent in respect of which the distress was levied exceeds £20; unless before judgment is given both parties have agreed in writing, signed by themselves, their attorneys, or agents, that the decision of the judge shall be final.

When goods taken in distress have been replevied, and a replevin bond given, the distrainer has no further lien on the goods. If he obtains a verdict, and they are not then returned to him, his only remedy lies in enforcing the bond against the tenant and his sureties. The latter are liable in two events:—first, if the tenant do not prosecute his action either in the superior courts in a week from the date of the bond, or at the next county court; secondly, if he do not succeed in his action, and then fails to return the goods or to pay the rent, and also (whichever of these alternatives he may adopt) fails to pay the costs of the action. If the goods are not returned the sureties cannot be made liable for more than the value of the goods, with the costs as

above; and if the value of the goods taken exceeded the rent due at the time of the distress, they will only be liable for such rent and costs.

If the registrar of the county court have not taken any, or have taken an insufficient replevin bond, an action will lie against him, if he had notice that the sureties were not responsible,—if he neglected means of information within his reach—or if he acted without reasonable caution. But he is not bound, it would appear, to go out of his office to make inquiries; and general reputation as to the want of credit of the sureties in the neighbourhood in which they live will be evidence against the registrar. But if the sureties were apparently unimpeachable and there was no negligence in taking them, or if the distrainer assented to their being taken, the registrar will not be liable, although they should ultimately fail to fulfil their liability.

CHAPTER IX.

OF THE PAYMENT OF TAXES AND RATES.

ALL rates and taxes charged upon or with reference to real property are in the first instance payable by the occupiers of land or houses, but while the tenant has no right to reimburse himself with respect to some, he may deduct others from his rent and thus throw their burthen ultimately upon the landlord. Leases for terms of years generally contain covenants regulating the liability to rates and taxes as between landlord and tenant, and before the conclusion of this chapter we shall advert to the manner in which these are construed. But, in the first instance, we will state what is the law where there are no covenants, or express stipulations on this point, as is generally the case where the tenancy is one from year to year.

Of the three parliamentary taxes imposed upon real property—the land-tax, the property-tax, and the house duty—the tenant is entitled to deduct from his rent the two first. If, however, he does not deduct what he has paid for landlord's property-tax from the next rent which accrues due, he cannot afterwards recover it. If it is said that rent is to be paid "without de-

duction," the tenant must pay all taxes and rates save landlord's property-tax.

Poor-rates are said not to be a tax upon the land, but a personal charge in respect of the occupation of land. They are therefore borne by the tenant and not the landlord. To this rule, however, there are some exceptions. By the 59th Geo. III., c. 12, s. 19, the inhabitants of any parish in vestry assembled are empowered to direct that landlords, who have let their houses to occupiers at rents not exceeding £20, nor less than £6 per annum, for terms less than a year, or at rents payable at less than quarterly periods, shall be rated instead of the occupiers. But by section 20, the goods of the tenants may be distrained for such rates as are actually due during the time of their occupancy, and they may deduct them from their rent. This Act, it will be observed, is confined to cases in which the premises are let for less than a year. But the 13th and 14th Vict., c. 99, extends to rates payable in respect of premises held on a yearly tenancy. It authorises the vestry to rate owners of tenements whose rateable value shall not exceed £6, to the poor-rate and the highway rate, at three-fourths of the amount at which such tenements would have been rateable if the act had not passed. The rates so assessed may be recovered by distraint, either upon the goods of the owners or upon the goods of the tenants, to the extent to which they have accrued during their occupancy.

For the sewers-rate the commissioners may assess either the landlords or tenants at their discretion.

County and highway rates, and church-rates are a charge upon the occupier and not on the landlord.

Rates for the paving, lighting, and cleansing of the streets, are usually regulated by local Acts which, as a general rule, cast the burthen upon the occupiers.

By the General Waterworks Act (10th and 11th Vict., c. 17, s. 22) the owners of dwelling-houses, the annual value of which does not exceed £10, are made liable, instead of the occupiers, to the payment of water-rates.

We are now to see what are the liabilities of the parties under covenants or contracts with respect to the payment of taxes. Of course if the covenant (or a clause in an agreement) mentions the taxes specifically, no difficulty can arise. Though, it must be observed, that even if a covenant contain a promise by the tenant to pay the landlord's property-tax without afterwards deducting it from the rent, such a stipulation is void under the Income and Property-tax Act.

But if the covenant is worded generally, doubts may arise, particularly as to how far it includes taxes imposed after the covenant was entered into. Thus a covenant by a lessee to pay rent "free and clear from all manner of taxes, charges, and impositions whatever," will oblige him to pay all taxes of every kind (save landlord's property-tax) that either are or may in future be charged upon the premises. But a covenant to pay rent "without deducting any taxes," has been held only to cover existing taxes (with the same exception), or subsequently imposed taxes of the same kind.

A covenant to pay "parliamentary taxes," applies only to taxes imposed directly by the Legislature. One to pay "taxes on the land" does not extend to church rates or poor-rates, for they are personal charges.

A point of considerable interest in reference to this part of our subject is, as to the responsibility of an incoming tenant for rates and taxes which should have been discharged by a previous tenant, but are left unpaid at the time of his entrance. Now arrears of land, property, and assessed taxes, *i. e.* house duty, are (like the ground-rent or rent due to a superior landlord) recoverable by distress upon the premises, whoever may be in the occupation thereof. The new tenant must therefore pay these. The two first taxes he may deduct from his rent (unless, indeed, as to the land-tax, the previous tenant's agreement, or lease, contained a stipulation or covenant that he was to pay it); as to the last he will be without remedy, unless he can get it from the previous tenant. Before a house, therefore, is taken from such previous tenant, it would be advisable to ask him for the last receipts of these taxes, and if it appears that there are any arrears, it should be seen that they are paid before the agreement is signed, or possession taken. If the landlord is letting the house, a person who proposes to become tenant should either satisfy himself by inquiring at the collector's that all queen's taxes have been duly paid, or should require the landlord to indemnify him against arrears.*

* For a form of such indemnification, see Appendix, page 174.

Poor-rate, church-rate, and county-rate, being, as we have seen, personal charges, no arrears can be demanded from an incoming tenant. By the 17th Geo. II., c. 38, if a tenant occupy a house, land, or other premises, for part of a year, and then leave, and another tenant succeeds, each shall be liable to the poor-rate, for such premises, in proportion to the time he occupied the same. And if a tenement be unoccupied at the time of making a rate, a tenant afterwards occupying it shall pay a proportion of the rate upon it according to the time he shall have occupied the same —such proportion, in cases of dispute, to be settled by two justices. And by 3rd and 4th Wm. IV., c. 22, s. 18, sewers-rates, when levied upon the occupiers, are to be similarly apportioned between the outgoing and the incoming tenant.

As it may be convenient to have at hand the means of calculating the fixed burthen thrown upon the tenant by the house duty, we subjoin the schedule of rates appended to the Act (14th and 15th Vict., c. 36) imposing them (which only extends to Great Britain).

For every inhabited dwelling-house which, with the household and other offices, yards, and gardens therewith occupied and charged, is or shall be worth the rent of twenty pounds or upwards by the year,—

Where any such dwelling-house shall be occupied by any person in trade who shall expose to sale and sell any goods, wares, or merchandise in any shop or warehouse, being part of the same dwelling-house, and in the front and on the ground or basement story thereof:

And also where any such dwelling-house shall be occupied by any person who shall be duly licensed by the laws in force to sell therein by retail, beer, ale, wine, or other liquors, although the room or rooms thereof in which any such liquors shall be exposed to sale, sold, drunk, or consumed, shall not be such shop or warehouse, as aforesaid:

And also where any such dwelling-house shall be a farm-house occupied by a tenant or farm servant, and *bonâ fide* used for the purposes of husbandry only:

There shall be charged for every twenty shillings of such annual value of any such dwelling-house, the sum of sixpence.

And where any such dwelling-house shall not be occupied and used for any such purpose and in manner aforesaid, there shall be charged for every twenty shillings of such annual value thereof, the sum of ninepence.

But by the third section—

No market garden or nursery ground occupied by a market gardener or nurseryman *bonâ fide* for the sale of the produce thereof, in the way of his trade or business, shall be included in the valuation of any dwelling-house and premises in charging the duties made payable by this Act.

CHAPTER X.

OF WASTE AND REPAIR.

THE respective rights and liabilities of landlord and tenant in respect to the repair of the premises or to the commission of what the law terms "waste" (that is, the doing injury or damage, or permitting it to accrue to the estate), depend either upon the implied obligations which the law casts upon them, when there are no covenants or agreements on the subject, in the lease or other instrument by which property is let; or upon the true meaning and construction of such covenants when they exist. We shall therefore consider the question with reference to these two states of circumstances.

1. WHERE THERE IS NO EXPRESS COVENANT OR AGREEMENT.

In such a case the landlord is under no obligation whatever to repair the house, although its state may be such that the tenant can have no beneficial occupation of it; and even if it should fall and destroy the furniture in it, the landlord will not only be irresponsible for the damage thus sustained by the occupier,

but will be entitled, while the house is down, and whether he rebuild it or not, to insist on being paid his rent to the end of the term if there is a lease; or, if there is not, until the tenancy is determined by a proper notice to quit. With respect to the lessee or tenant the question is not quite so simple. It is clear that the law implies on the part of every tenant promises or engagements—1st, to use the property he occupies in a tenantlike and proper manner; and 2nd, to take reasonable care of it. Now the first of these engagements may be violated by doing an actual injury to the premises, and this the law calls "voluntary waste;" while the second will not be fulfilled if the tenant "remains a passive spectator of decay and ruin, although doing nothing to accelerate, yet, on the other hand, making no effort to retard the evil." Such absence of "reasonable care," or, in other words, such neglect to do proper repairs, the law designates "permissive waste." Now

1st. As to voluntary waste. It will be voluntary waste if the tenant pulls down any part of the premises which he occupies, destroys any of the walls, removes or injures wainscots or floors, chimney-pieces, stoves, bells, or any of the landlord's fixtures,* opens new windows and doors, or otherwise changes the form and arrangement of the house without the consent of the owner. Nor must he, although it might improve the value of the property, convert one species of edifice into another, as a dwelling-house into a shop, a water-

* As to fixtures see chapter xi.

mill into a windmill, &c. If he do these or similar things he will be liable (whether he hold under a lease for a term of years, or from year to year) to an action for damages at the suit of his landlord. No alterations should therefore be made by the tenant without the express, and, if it can be obtained, the written consent of the landlord.

2nd. As to permissive waste or the omission to make proper repairs. There is in the obligations to be fulfilled under this head, considerable difference between tenants for years and tenants from year to year. It is not indeed easy to say how far the liability of the first class extends, in the absence of any express agreement on the subject. There are no recent authorities directly governing the point, no doubt, because it is rarely, if indeed ever, raised, since the leases under which tenants for years hold always contain express provisions which supersede the law as it would stand without them. It will therefore be sufficient to say that the better opinion seems to be that such tenants would be obliged to do all the repairs, both *substantial** and *ordinary*, which might become necessary during their term. A tenant from year to year, on the other hand, is not bound to do more than keep the premises wind and

* "*Substantial* repairs" are defined in a work of authority (Woodfall's "Landlord and Tenant") to be those "to the main walls and other essential parts of edifices, and the replacing of beams, girders, roofs, and other main constructive timbers;" while "*ordinary repairs*" are "common reparations to windows, shutters, doors, and the like."

watertight, when that can be done without "substantial" repairs; and generally to do repairs coming fairly under the head "ordinary." Even with respect to those parts of the premises which are the subject of "ordinary" repairs, regard must be had to their age and general state, and condition, when he took possession, for he is not bound to replace old and worn-out materials with new ones, nor to make good the inevitable depreciation resulting from time and ordinary wear and tear.

It only remains to add, while considering the liabilities of tenants to repair, irrespective of express agreement, that by the 14th Geo. III. c. 78, it is enacted that "no action, suit, or process whatever shall be had, maintained, or prosecuted against any person in whose house, chamber, stable, barn, or other building, or on whose estate any fire shall accidentally begin." The exemption from liability given by this statute extends to all kinds of tenants; but it is expressly provided that it shall not affect any express agreement between landlords and tenants. It has also been held by the Court of Queen's Bench that it does not apply where the fire arises from negligence.

2. WHERE THERE IS AN EXPRESS COVENANT OR AGREEMENT.

Leases of houses usually contain a general covenant to keep and leave the premises in good repair; and there are also, in most cases, according to the agree-

ment of the parties, particular stipulations with respect to the repair or treatment of specific portions of the premises: for instance, as to the painting of the house, inside and outside, once in so many years; as to the cleansing in the last year of the tenancy of all drains, cesspools, &c. The terms employed in framing these covenants vary according to the intention of the parties, or the fancy of the conveyancer employed; and, of course, the constructions of which they admit will be equally dissimilar. Without, however, entering into detail, which would be both tedious and uninstructive, we may briefly explain some of the leading principles which the courts have applied to their interpretation, and mention some of the points of most practical importance which have been decided in reference to terms constantly employed. These covenants are nearly always entered into by the tenant; and we shall therefore, in our remarks, assume that he is the covenantor; but, of course, the same construction would be put upon the same language if the relation of the parties was reversed;—it being always borne in mind that a convenant is construed most liberally in favour of the person *with* whom, and most strictly against the person *by* whom, it is made.

The liability of a lessee, upon a covenant that he will well and sufficiently repair and maintain the demised premises during his term, and deliver them up at the expiration thereof in good repair and condition, will depend upon the age and general condition of the house at the commencement of the tenancy. This is so clearly

and distinctly explained by the late Chief Justice Tindal,* and the point is one of so much importance, that it will be best to quote the exact words used by this very learned judge:—"When a very old building is demised, and the lessee enters into a covenant to repair it, it is not meant that the old building is to be restored in a renewed form at the end of the term, or of greater value than it was at the commencement of the term. What the natural operation of time flowing on effects, and all that the elements bring about, in diminishing the value, constitute a loss which, so far as it results from time and nature, falls upon the landlord. But the tenant is to take care that the premises do not suffer more than the operation of time and nature would effect; he is bound, by seasonable applications of labour, to keep the house as nearly as possible in the same condition as when it was demised. If it appear that he has made these applications, and laid out money from time to time upon the premises, it would not be fair to judge him very rigorously by the reports of a surveyor, who is generally sent in for the very purpose of finding fault. The jury are to say whether or not the lessee has done what was reasonably to be expected of him, looking to the age of the premises, on the one hand, and to the words of the covenant which he has chosen to enter into, on the other." But where a tenant covenants to *keep* the premises in good repair, he is bound to *put* them into good repair (their age and the class of buildings being con-

* *Gutteridge* v. *Munyard*, Moo. and Rob. 336.

sidered), and is not justified in allowing them to remain in bad repair (for their age and class) because he found them in that condition. This state of the law clearly suggests, as a practical caution, the advisability of having the premises inspected and reported upon by a competent surveyor before the lease is signed; so that the best evidence may be forthcoming, during or at the end of the term, if there is any dispute as to the extent of the dilapidations, and the tenant's liability to make them good. If possible, it would be well to have a joint survey, on behalf of lessor and lessee; and, then, if its results were put into writing, and their correctness assented to by both parties, the document embodying them might be used in evidence at any subsequent time.

When a tenant agrees to keep or put premises in "habitable repair," he must put and keep them in such a state that they are reasonably fit for the occupation of the class of persons likely to inhabit them.

A covenant to repair applies not only to buildings in existence when the lease was made, but to erections made upon the premises during the tenancy.

Under a general covenant to repair and leave in repair, a lessee, or the person to whom he has assigned his interest, will be obliged to rebuild the house in case it should be totally destroyed by fire (for the 14th Geo. III., c. 78, does not apply*) or flood or tempest. And what is more, he must pay rent though he has lost the enjoyment of the premises. To avoid this hardship, it is usual to introduce into the covenant to repair an

* See page 91.

express exception with respect to making good damage done by fire, flood, or tempest. It is not uncommon also to stipulate for the insurance of the premises by the lessee, and to provide for the application of the money received from the insurance office to the rebuilding of the premises, and also for the cession or abatement of rent until that is completed. By this means something like a just distribution of the burthen is attained.

Now with regard to the remedies in cases of waste or non-repair. Whether the duty of using the premises in a tenantlike manner and of repairing, arises simply from the promise implied by the law or is imposed by an express agreement or covenant, the party who violates or neglects it is liable to an action for damages. And if there is an express covenant to repair by either lessor or lessee he will be liable to an action, which may be immediately brought, if they are out of repair at any time during the term. The landlord, however, has no right, in the absence of any stipulation, to come upon the premises to inspect them and see their state; and hence it is usual in leases, expressly to give him the power to do so on a limited number of days in the course of a year. And it must be distinctly borne in mind that if the landlord agree to do repairs his neglect to do them—into whatever state the house may fall—will not entitle the tenant to quit without notice or before the expiration of his term. His only remedy is by action.

It is usual to insert in the lease a proviso rendering it void in case the lessee should not perform

the covenant to repair, and in that case the landlord would be able to take such steps as will be mentioned in a subsequent chapter to recover possession of the premises.

In certain cases, where a tenant is known to be about to commit serious waste—as for instance to pull down a house or convert it into a shop—a court of equity will interfere by injunction to restrain him. And if a party has actually commenced operations an action for damages may be immediately brought, and then a common law court also will grant an injunction.

There is also, in the metropolitan police district, a summary remedy in cases where the damage is to a small extent, for, by s. 38 of the 2nd and 3rd Vict., c. 71, a police magistrate is empowered to award compensation not exceeding £15 in cases of wilful injury done by tenants to houses or furniture; but the complaint must in such cases be made "within one month next after the commission of the offence or the end of the tenancy and occupation."

Before concluding this chapter we may add that, in the case of lands let for cultivation, the law, in the absence of express agreement to the contrary, will treat it as "waste" if they are not cultivated, according to the "custom of the country;" and it will also be "waste" if the tenant cut down timber, except for the necessary reparation of premises let with the land; or if he open new gravel or clay pits (except for the same purpose) or mines. The remedies are the same as in the case of house property.

CHAPTER XI.

FIXTURES AND EMBLEMENTS.

WHATEVER is attached to the freehold (*i. e.* either to the soil or to the fabric of a building) becomes thenceforth part of it, and cannot be removed, unless it be what is called a "fixture." For our present purpose fixtures may be defined to be personal chattels which have been annexed to land or a house, but which may afterwards be severed and removed by the party who has annexed them, or his personal representatives, without the consent of the owner of the freehold. When an article is annexed to the soil or the building, and is legally irremovable, it ceases to be a "fixture," and becomes, as we have said, part of the freehold.

The first question that obviously suggests itself is—what is meant by being "annexed?"—for, of course, if there is no annexation, the thing, whatever it may be, remains a mere chattel, and can be removed like other goods and effects.

Now, the size, weight, or character of the thing does not affect the question, for in one case it was held that a granary, resting *by its mere weight* upon pillars built into the land, was not a fixture, but a mere chattel. To constitute a fixture it is necessary that the sub-

stance should be let into the soil or into the fabric of the house. A *slight* fastening will not suffice. Whether there is such an annexation to the freehold as to deprive it of the character of a movable chattel, depends, as was said by the Court of Exchequer on one occasion,* "principally on two considerations:—first, the mode of annexation to the soil or fabric of the house, the extent to which it is united to them, and whether it can easily be removed without injury to itself or the fabric of the building; and, secondly, on the object and purpose of the annexation, whether it was for the permanent and substantial improvement of the dwelling, or merely for a temporary purpose, or *the more complete enjoyment and use of it as a chattel.*" And perhaps the same case furnishes as good an illustration as could be obtained of the manner in which these principles are practically applied. One portion of some machinery used for the purpose of spinning cotton was fixed by screws to the wooden floor of a mill, and another portion was fastened by screws sunk into holes in the stone flooring secured by molten lead poured into them. It is clear that the machinery could be removed without any injury to the building—that it could also be removed entire, and without any injury to itself—and that the object of fastening it to the floor was not the improvement of the building, but the more convenient use of the machinery. The court accordingly held that no part of it was a "fixture." In like manner, where the tenant has let into the ground

* Per Parke, B., in *Holdswell* v. *Eastwood*, 6 Ex. 295.

solid brick foundations, and thereupon has placed some wooden erection—as, for instance, a windmill, pump, pigeon-house, or conservatory—either merely resting on the brick-work or only fastened to it by movable pins or bolts, it has been decided that, while the foundation passed to the landlord as a fixture, the wooden structure raised upon or bolted to it remained the property of the tenant. On the other hand, a conservatory, erected on a brick foundation fifteen inches deep, attached to the wall of the dwelling-house by cantilevers let nine inches into the wall, connected with the parlour-chimney by a flue, and having two windows in common with the dwelling, and with a pinery in the garden erected on a brick wall four feet high—was decided to have been attached to, and incorporated with, the freehold. Such are the general principles—as illustrated in actual decisions—by which the point we are now discussing is governed.

But suppose that an article has been unquestionably annexed to the freehold by a tenant, under what circumstances is it removable by him?—is it, in fact, a "tenant's fixture?" Now, tenants' fixtures are of two kinds.

1st. Those which are put up for the ornament of the premises or the convenience of the tenant's occupation. Many things which are often classed under this head, as "tenants' fixtures," are not, in fact, fixtures at all. There can be no doubt, for instance (and, indeed, it was intimated by the court in a case to which we have already alluded *), that carpets attached

* *Hellawell* v. *Eastwood*, see page 98.

to the floor by nails, curtains, looking-glasses, pictures, and other matters attached in a similarly slight manner to the walls or flooring, are as much movable chattels as the household furniture, and that they do not possess the distinguishing attribute of fixtures—non-liability to distress for rent. But when things have really been "annexed"—using that word as we have explained it above—to a dwelling-house by a tenant, how is he to know when he may remove them? If they are articles either ornamental or of domestic convenience, if they are rather adjuncts and fittings, than additions to, or improvements of, the house itself, if they can be removed entire, and without substantial damage to the fabric; and lastly, if, by the custom of the country, such fixtures are usually valued to incoming tenants, the tenant may safely treat them as his fixtures, and either remove or sell them.

Applying these tests to the cases which came before them, the courts have held stoves, grates, ornamental chimney-pieces, wainscot fixed by screws, window-sashes, &c., to be tenant's fixtures. On the other hand, the conservatory to which we have alluded in a previous page,* was held to have been so thoroughly incorporated with the dwelling-house as to be irremovable. It is of course in cases falling between these two extremes that the real difficulty lies of deciding what are fixtures; but when there is any doubt, looking at the other tests we have mentioned, it will generally be found quite safe to rely on the practice with reference

* See page 99

to valuation as between outgoing and incoming tenants, because where there is such an established and *well-known* custom the courts will consider it as being in the minds and recollection of the parties at the time of commencing the tenancy, and as being then virtually assented to by them and incorporated into the agreement, if there is no express stipulation to the contrary.

2nd. Those which are put up for the purposes of carrying on some trade, business, or manufacture. The tenant's privilege in relation to these is even more extensive than in reference to those erected for ornament or convenience. Not only may he remove all kinds of shop and office fittings, of machinery, and of vessels for the purpose of manufacture, even although they may be strongly attached or set into the fabric, and their removal may occasion some substantial damage to it; but he may also take away erections made for the purpose of covering or containing machinery and manufacturing apparatus. For instance, he may take away both soap-boilers' furnaces, fat vats, coppers, cyder-mills, baking-ovens, steam-engines and salt-pans; and also engine-houses or other sheds of wood and brick, constructed for the reception of the vats, pans, &c. It would seem, however, that to render erections removable they must have some reference to, and be built for the express purpose of holding or covering things which are in their nature chattels, and capable of being moved entire. For it never has been decided, and probably never will be, that the tenant may remove substantial and extensive additions to the premises,

though built exclusively for the convenience of trade, such as lime, pottery, or brick kilns, wind or water-mills, workshops, storehouses, smelting and glass-houses, and other erections of that kind, which are in fact built to be used themselves, not to enable some movable chattels to be used. Practically speaking, indeed, no difficulty ever arises in cases of this kind, as they are, and always should be provided for by express agreement. Where this does not exist the courts will be very much guided by any prevailing and recognised custom in the trade or branch of manufacture for which the alleged fixtures were used. One other illustration, we may be permitted, of the extent to which the privilege of removing trade fixtures has been carried. If a private person plant any trees, shrubs, box borders, or flowers in his orchard or garden, they immediately become annexed to the freehold, and are thenceforth irremovable. On the other hand, the same things planted for sale by a nurseryman in the course of his business may be taken up and sold.

Formerly the privilege enjoyed by traders and manufacturers was not in any degree shared by agriculturists, who could not attach anything to the soil or the fabric of the farm buildings without its immediately becoming irremovable, and remaining the property of the landlord at the end of their tenancy. To remedy the injustice thus inflicted upon tenants, and to remove the impediments thus placed in the way of scientific agriculture, it was enacted by the 14th and 15th Vict., c. 25, s. 3,—

"That if any tenant of a farm or lands shall, after the passing of this Act, with the consent in writing of the landlord for the time being, at his own cost and expense, erect any farm-building, either detached or otherwise, or put up any other building, engine, or machinery, either for agricultural purposes or for the purposes of trade and agriculture (which shall not have been erected or put up in pursuance of some obligation in that behalf), then all such buildings, engines, and machinery, shall be the property of the tenant, and shall be removable by him, notwithstanding the same may consist of separate buildings, or that the same or any part thereof may be built in or permanently fixed to the soil, so as the tenant making any such removal do not in anywise injure the land or buildings belonging to the landlord, or otherwise do put the same in like plight and condition, or as good plight and condition as the same were in before the erection of anything so removed: Provided nevertheless, that no tenant shall, under the provision last aforesaid, be entitled to remove any such matter or thing aforesaid without first giving to the landlord or his agent one month's previous notice in writing, of his intention so to do, and thereupon it shall be lawful for the landlord or his agent on his authority, to elect to purchase the matters and things so proposed to be removed, or any of them, and the right to remove the same shall thereby cease, and the same shall belong to the landlord: and the value thereof shall be ascertained and determined by two referees, one to be

chosen by each party, or by an umpire to be named by such referees, and shall be paid or allowed in account by the landlord who shall have so elected to purchase the same."

We have now explained as succinctly and as clearly as we can the main principles of the law of fixtures as between landlord and tenant. By these any questions arising for the first time must be decided, and it was therefore necessary to state them; but as a large number of fixtures have been already the subject of judicial consideration, we shall subjoin an alphabetical list of those fixtures which the courts have held *to be* or *not to be* removable:—

1. LIST OF THINGS HELD NOT TO BE REMOVABLE.

Agricultural erections*
Alehouse bar
Barns fixed in the ground
Beast-house
Benches
Box borders
Carpenter's shop
Cart-house
Chimney-pieces (not ornamental)
Conservatories
Doors
Dressers
Flowers
Foldyard walls
Fruit-trees (except by nurserymen)
Fuel-house
Glass windows
Hearth
Hedges
Improvements (permanent)
Jibs
Keys
Locks
Millstones
Partitions
Pigeon-house
Pineries substantially affixed
Pump-house
Racks in stables
Strawberry-beds
Trees
Waggon-house

* But see previous page.

2. LIST OF THINGS HELD REMOVABLE (NOT BEING TRADE FIXTURES).

Arras hangings
Barn set on blocks
Beds fastened to ceiling
Bells
Bins
Blinds
Book-cases
Buildings set on blocks, rollers, pillars, &c.
Cabinets
Chimney backs
Chimney-glasses
Chimney-pieces (ornamental)
Cider-mills
Cisterns
Clock-cases
Coffee-mills
Cooling-coppers
Coppers
Cornices (ornamental)
Cupboards
Dutch barns
Furnaces
Furniture, fixtures put up as
Granary on pillars
Grates
Hangings
Iron backs to chimneys
Iron chests
Iron malt-mills
Iron ovens
Jacks
Lamps
Looking-glasses
Malt-mills
Marble chimney-pieces
Marble slabs
Mash tubs
Mills on posts
Mills *laid* on brick foundation
Ornamental fixtures
Ovens
Pattens, erections on
Pier-glasses
Posts
Presses
Pumps slightly attached
Rails
Ranges
Sheds
Shelves
Sinks
Slabs of marble
Stoves
Tapestry
Tubs
Turret clocks
Vessels, &c., on brickwork
Wainscot fixed by screws
Water tubs
Windmill on posts

3. LIST OF TRADE FIXTURES DECIDED OR SAID TO BE REMOVABLE.

Accessory buildings, *i. e.* accessory to a removable utensil
Brewing vessels and pipes
Cider-mills
Cisterns
Closets
Colliery machines
Coppers
Counters

Cranes	caps or steps of timber	Shrubs planted for sale
Desks	Partitions	Soap works (fixtures in)
Drawers	Plants and pipes of brewers, distillers, &c.	Steam-engines
Dutch barns	Presses	Stills
Engines	Pumps	Trees planted for sale
Fire-engines	Reservoirs	Varnish houses
Furnaces	Salt-pans	Vats
Gas-pipes	Shelves	
Glass fronts		
Iron safes		
Machinery let into		

4. FIXTURES AS TO WHICH THE RIGHT OF REMOVAL IS UNSETTLED.

Brick-kilns	Green-houses	Store-houses
Frames in nursery-grounds	Hot-houses	Tables fixed or dormant
Furnaces in smelting-houses and glass-houses	Lime-kilns	Verandahs
Glasses in nursery-grounds	Malting floors, stoves, &c.	Wind or water mills
	Pavements	Workshops
	Sheds	

It is remarked in the work to which we are indebted for this list,* "that the reader must not assume that *in no instance* can the articles enumerated be excepted from the influence of the particular decisions respecting them; for the courts have so frequently laid stress upon the particular circumstances of the case before them, or the peculiar state or position of the fixture in

* Chitty on Contracts.

question, that few decisions can be regarded as absolute authorities, even in cases which have reference to fixtures of a similar denomination." Even with reference to articles included in the list it will be necessary to bear in mind the considerations adverted to in the earlier part of this chapter; and in every case to consider how far any special and unusual circumstances may bring them within or cause them to fall outside any of the principles regulating the right of the tenant to remove articles once attached to the freehold.

There is another caution which must be observed in referring to the above list. Although, subject to the qualifications we have mentioned, it no doubt contains a correct enumeration of things which have been held *removable* by the tenant; it is open to the remark that many of them are not *fixtures* at all. They are not "attached" or "annexed" to the land or the freehold in the sense used by the court in the case of *Hellawell v. Eastwood*, and would not, therefore, enjoy that protection from distress, which is the test of a "fixture" properly so called.

We have hitherto considered the respective rights of the landlord and tenant as they stand in the absence of any agreement on the subject of fixtures, but of course they may be varied by any *implied* agreement which may be collected from circumstances occurring either at the commencement or during the tenancy; and still more by any *express* agreement either in a covenant of a lease or otherwise; and this, too, although they are not mentioned by name. For

instance, a person who covenants to keep in repair all erections "built and thereafter to be erected and built," cannot remove even trade fixtures. And where a party covenanted to leave a water-mill "with all fixtures, fastenings, and improvements," these words were held to include a pair of new millstones which he set up during his tenancy, although by custom they might have been removed.

A tenant must remove his fixtures either during his term, or during such time as he may hold possession after his term in the capacity of a tenant—for instance, while he holds on after his term under circumstances from which, as we explained in a previous chapter, a tenancy from year to year would be implied.* But if he quit possession, or if he retain it *against* the will of his landlord, his *right* to take away fixtures is gone. And even if a tenant, having erected fixtures, which he would be entitled to remove during his term, should at its close renew his lease, he must take care to reserve his right to remove the fixtures which he was entitled to sever under his first tenancy—otherwise, being on the premises previous to the commencement of the second term, they will be irremovable when it expires.

It is almost unnecessary to say that the tenant has, at the end of his occupancy, a right to remove any fixtures which he purchased from the *landlord* at its commencement.

The right to remove or to sell fixtures as between the

* See page 27.

out-going and the in-coming tenant is governed by the same principles as prevail between landlord and tenant. Where, however, fixtures are valued, for the purpose of sale, between successive tenants, it is desirable that the landlord should be a party to the bargain. And this for two reasons:—In the first place, the old tenant might otherwise overreach the new one, by selling fixtures which he had neither erected nor bought, and which, therefore, were not his; and in the second place, if the transaction took place without the landlord's concurrence, it would be open to him afterwards to contend that fixtures which the first tenant had erected, not having been removed before he left, had become part of the premises;—that the second tenant had taken them from him (the landlord) as part of such premises, and that he had therefore no right to sever them. If, indeed, the in-coming purchase from the out-going tenant, fixtures which are the property of the landlord, he may recover back any money which he has paid for them.

When premises are left vacant, it sometimes happens that the out-going tenant obtains permission from the landlord to leave his fixtures, in order, if possible, to sell them to an in-coming tenant, when such shall be found. Great caution is, however, requisite in such an arrangement, for if the landlord were to let a new tenant into the premises before he had purchased the fixtures, the latter might afterwards insist on retaining them, since neither the old tenant nor even the landlord

would then have a right to enter on the premises in order to remove them.

Where trade or domestic and ornamental fixtures are removed, the tenant must make good any damage sustained by the premises from the act of removal. And where a fixture has been put up in substitution for an article existing at the time the tenancy commenced, the tenant, on taking down his own fixture, is bound to restore the former article, or replace it by one of the same description.

If a tenant becomes bankrupt, his fixtures do not pass to his assignees unless they take to the premises. But if a tenant mortgage his lease, the right to his fixtures passes to the mortgagee—even as against his assignees in bankruptcy.

The remedy for an improper removal of fixtures by the tenant, or an improper detention of them by the landlord, is by action, either in the superior or county courts, according to the damages claimed.

Appraisements of fixtures, and memorandums of their sale, must be stamped.*

The tenant's right to "emblements" was formerly a subject of considerable importance; but it has ceased to be so since the 14th and 15th Vict. c. 25, s. 1. It was the right which the law gave to the tenant of lands let for the purpose of cultivation, either for an uncertain term, or for a term which unexpectedly came to an end by the cessation of the interest of his superior landlord,

* See pages 38 and 39.

to take away the crops (yielding an *annual* return, as wheat, barley, &c.) which were growing on the land at the end of his tenancy. But by the statute to which we have referred, it is enacted "that when the lease or tenancy of any farm, or lands held by a tenant at rack rent, shall determine by the death or cesser of the estate of any landlord entitled for life or for an uncertain interest, instead of claims to emblements, the tenant shall continue to occupy such farm or lands until the expiration of the then current year of his tenancy." We have already explained the manner in which the last year's rent is in that case apportioned between the parties entitled to share it.* Most farms or cultivable lands are let so that the tenancy commences either at the end or the beginning of the agricultural season, and in all such cases this Act will secure to the tenant the right to reap where he has sown.

* See page 45.

CHAPTER XII.

MISCELLANEOUS RIGHTS AND LIABILITIES OF LANDLORDS AND TENANTS.

Leases frequently contain covenants on the part of the lessee to keep the premises insured:—the name of the office in which the insurance is to be effected, and the amount of the policy, being also generally stated. Questions on these covenants very often arise in practice, and it may therefore be well for the tenant to bear in mind some of the most important points decided in relation to his liabilities. When a lessee has covenanted to insure and keep premises insured, it will be a breach of the covenant to allow them to remain uninsured for ever so short a period, and that, too, although no fire occur or damage be done to the premises in the meantime. It will also be a breach of covenant to insure, in the name of the tenant only, when the lease stipulates that the policy shall be in the joint names of the landlord and tenant. And as the breach of this covenant continues so long as a state of things exists inconsistent with the provisions of the lease, any sanction, express or implied (as by receipt of rent), which the landlord may give to a departure from the letter of the covenant, will only apply to what is past. And if

the violation still continue, the tenant may, at any moment, be turned round upon and ejected from the premises, if, as is usual, the lease contains a proviso enabling the landlord to re-enter* upon the breach of any of the covenants. It will be seen from these instances how carefully a tenant should observe the strict letter of such a covenant as this.

These covenants generally provide in express terms that the money received from the insurance office shall be laid out in rebuilding the premises. Even, however, if that is not done, a clause in the old Metropolitan Buildings Act (14th Geo. III., c. 78, s. 83), which is still in force, enables any person interested in the buildings insured to require the insurance company to cause the insurance money to be laid out in rebuilding.

Conditions that the tenant shall not assign without the landlord's licence, and also that he shall not underlet, are frequently inserted in leases in order to prevent the tenant from parting with his interest in the premises to an insolvent person or to one of bad character. *Unless, however, special words are inserted,* such a condition will not be broken by an "assignment by operation of the law," that is to say, where the tenant's interest in the lease passes on his bankruptcy to his assignees, or is sold by the sheriff under an execution. If the tenant, however, take the benefit of the insolvent Acts, that is regarded as a *voluntary* assignment to his assignees. If the lease require the landlord's licence

* As to provisos or conditions of re-entry, see chapter xiv.

to be in writing, a licence by word of mouth will not bind him. If the landlord licenses one assignment his right to insist on the condition is gone for ever if nothing is done to revive it, and any further assignments may be made without forfeiting the term. A tenant may, however, still remain liable to an action for damages for breach of the *covenant* not to assign. Neither a *condition* that the lessee shall not underlet, nor a covenant to the same effect, are violated by his taking lodgers.

A covenant not to carry on certain specified trades and businesses, or any obnoxious or offensive trades and businesses generally, is very common in leases of the better description of house property. As to the trades enumerated, no difficulty can of course arise; but in construing the general words "any offensive trade or business," the courts will look to the character of the locality, and recollect that what may be offensive or obnoxious in Belgravia may not be noticeable in Rotherhithe. The landlord does not waive his right to forfeit a lease for the breach of such a covenant, by accepting rent for however long a time, unless indeed he allow the lessee to spend money on the improvement of the premises in the faith that his lease is subsisting and perfectly valid.

Covenants for quiet enjoyment are another important part of the lease, but though apparently directed to the protection of the tenant, their real effect is to limit the liability of the landlord. For if there were no such

covenant in the lease the law would imply one on the part of the landlord to protect the tenant from all disturbance in his holding by the landlord, or by those claiming *under* him, or by those claiming by title *paramount* to him (that is, by an adverse and better title). But as these covenants are usually framed, the landlord only engages to protect the tenant from being ejected either by himself or by those claiming *under* him.

The Metropolitan Buildings Act (7th and 8th Vict., c. 84) contains some provisions which should not be overlooked by the owners and occupants of houses in the district to which it applies. The 54th and 55th sections prohibit the establishment, within a certain distance from houses, of trades dangerous to life (as the manufacturing of explosive substances) or detrimental to health. By other clauses it is provided that the owner of a building, incurring expense in repairing a party wall, in obedience to the directions of one of the district surveyors appointed under the Act, may recover a share of the amount so paid from the owner of the adjoining premises, such owner being defined as "every person in possession either of the whole or any part of the rent or profits of any ground or tenements, or in the occupation of such ground or tenements other than tenant from year to year, or a less term, or at will." Every tenant, other than those named, within the metropolitan district is compellable, by summary process before two justices or a police magistrate, to pay his landlord's share of the expense of repairing party

walls; having, however, a right to deduct the same from his rent, or to be otherwise indemnified by his landlord if his lease contain no covenant throwing the expense of such reparations on the tenant exclusively. Sections 41, 42, and 43 empower the district surveyor to pull down houses ruinous and dangerous to the passers-by; or to repair or remove chimney-pots, parapets, &c., dangerous to persons going along the streets. In the first case the expense may be levied by distress, either on the landlord or on the tenant next found in possession of the ground; and in the last case such distress may be taken of the tenant's goods. In both cases the tenant has a right to reimburse himself by deductions from his rent.

CHAPTER XIII.

CHANGES IN THE PERSONS WHO ARE LANDLORD OR TENANT.

It now becomes necessary briefly to mention some of the principal consequences which result from any change in the parties who, at the granting of a lease, or the commencement of a tenancy, stood towards each other in the relation of landlord and tenant. Such a change may be effected either by the landlord assigning his reversion (*i. e.* his interest in and ownership of the property subject to the term of years or other tenancy held by the tenant), or by the tenant assigning his interest. At law, both assignments are invalid, unless made by deed, but under some circumstances equity would treat an invalid assignment as an agreement for a valid one, and compel the assignor to execute a deed.

Now when a lessee assigns the term of years created by the lease under which he holds, it would be obviously unjust if he could thus discharge himself from liability upon the covenants into which by that lease he entered with his landlord. He therefore re-

mains liable upon all during the whole continuance of the term; and in addition to that, the person to whom he assigns is also liable—until he in turn assigns to some third party—upon all the covenants in the lease, which, according to the technical phrase, "run with land." The assignee has also a right to insist on the performance of covenants of the same class, which are to be fulfilled by the landlord. What is meant by "running with the land," is this:—that certain engagements having been entered into by *deed*, between the original landlord and tenant, whoever succeed to them as landlord on the one hand, or as tenant on the other, are respectively under the same liabilities to each other as the original parties to the lease. Now it is not all covenants which may be inserted in a lease that thus "run with the land," and upon which an assignee of the term is liable. All the covenants which, as we mentioned in a former chapter, were implied by the law on the granting of a lease* run with the land. And so do all covenants which directly relate to the land, and concern something in existence at the time of granting the lease (such as covenants on the part of the landlord for the tenant's quiet enjoyment of the premises, and on the part of the tenant to repair or to cultivate a farm in a particular manner), even although the original lessee did not expressly stipulate for their performance by his assignee. But if he did expressly stipulate for such performance, then a covenant, still relating directly to the

* See page 19.

land, but concerning something which is *not in being* at the time of the lease—as, for instance, the common covenant to build houses in a building lease—will also run with the land, and bind the assignee. If, however, the lease contained any covenants altogether collateral to the land and having nothing to do with it, then an assignee of the lease will not be liable upon these, even although "assignees" were expressly mentioned in the lease.

It will be seen from what we have said above as to the continuing liability of the original lessee and of his executors after his death, upon all the covenants contained in a lease to which he is a party, even although he has assigned over, that a lessee should be very cautious not to assign his lease to any but a respectable person, who is likely to perform the conditions of the lease. He should also be certain that he is thoroughly able to indemnify him against any future breaches of covenant which may be committed, and should obtain an indemnity in writing.

A tenant from year to year may, like a lessee, assign his interest. But he must recollect that he will be liable for the rent; and also for any waste which the person whom he thus substitutes as tenant may commit. Unless he makes a profit rent by sub-letting he had much better, if possible, get the landlord to discharge him from his tenancy, and to accept the new tenant in his place. This arrangement, for

the safety of all parties, should be reduced to writing.*

Under the Bankruptcy and Insolvency Acts, and also under an assignment for the benefit of creditors, the tenant's interest, either as lessee or as tenant from year to year, passes to the assignees, or to the trustees of the deed of assignment, if they choose to accept it, and if there is not (as is sometimes the case) any proviso in the lease rendering it void on the bankruptcy or insolvency of the tenant. Either the assignees or the trustees may refuse to take it, but they must elect in a reasonable time.

On the death of a tenant his interest as such, whether he is a lessee or only a tenant from year to year, passes to his executor or administrator, who may at once be sued in his representative capacity for any rent that is due or any breaches of covenant that may have been committed. If he has never entered into possession, or dealt with the premises in any way, he can discharge himself of all liability by showing (if such is the case) that the testator's estate did not yield sufficient assets to satisfy the demand. If, however, he have once taken possession, his position is much less favourable. He may then be sued in his personal capacity as an assignee. And if an action is brought against him for rent, he must apply the whole profits of the premises to meet the demand. If, however, they produce no profit, or less than the rent due, and he have no other assets of

* See next chapter, p. 124.

the testator, he should offer to surrender the lease, and if he do so he may, it would seem, protect himself. But if he be sued on any of the other covenants it seems very doubtful whether he can save himself from personal liability if he have ever taken to the premises. Before he does so, therefore, he should make very careful inquiry into their value, and its sufficiency to protect him from all liability.

CHAPTER XIV.

ON NOTICES TO QUIT, AND OTHER MEANS BY WHICH A TENANCY MAY BE DETERMINED.

If premises are held on lease for a term certain, the tenancy of course determines at its expiration without the necessity for any notice to quit or other procedure on either side. And this is also the case where the tenant holds merely under an agreement for a lease. But besides this regular expiration of a tenancy, it may be terminated by some default or misconduct on the part of the tenant; by a voluntary agreement between landlord and tenant; or, if its nature will admit of this, by a regular notice to quit given by either party.

DISCLAIMER.

A tenant will incur a forfeiture of his interest, and may be immediately ejected if he denies or "disclaims" the title of his landlord, and asserts that the property belongs either to himself or to strangers. But if the property changes hands, and then rival claimants appear, and the tenant refuses to pay rent to any until *it is* settled which is entitled, that will not amount to

such a "disclaimer" or denial of the title of the true owner as will enable him to eject the tenant. Nor can a lease for *a term of years* be forfeited by mere spoken words. And a distress put into premises for rent which accrued due after an alleged "disclaimer" is considered to waive it, and to restore the tenant to his former position.

PROVISOS FOR RE-ENTRY.

Almost all leases contain a condition or proviso whereby it is declared that the lease shall be forfeited, and that the lessor shall have a right to re-enter and repossess himself of the premises if the tenant commits a breach of some or of any of the covenants of the lease:—for instance, for non-payment of rent—for not repairing—for waste—for not insuring—for carrying on of prohibited trades, &c. In nearly all these cases it is obvious enough when a prohibited act has been committed and a forfeiture incurred. And the only proviso on which it is necessary to offer any observations here is that which enables the landlord to re-enter on non-payment of rent. Where the proviso is so framed as to give the landlord a right to re-enter if the rent be not paid when due and demanded, a demand of the precise rent due (after all deductions) must be made by him or his agent on the day on which it is due and payable—before sunset—at the place, if any, fixed for payment, and, if no place is fixed, then upon the demised premises. If the

tenant do not then pay the rent, the landlord may immediately bring an action of ejectment and turn him out. Very frequently, however, the proviso relieves the landlord from the necessity of demanding the rent, and in that case the tenant will incur a forfeiture if he do not himself go and pay or tender his rent on the appointed day. And however the proviso is worded in this respect, if half a year's rent be in arrear and no sufficient distress be found on the premises, the landlord may forthwith bring ejectment. If the tenant, by fastening the outer door, hinder the landlord from distraining, this will render it unnecessary to prove that there was no "sufficient distress" on the premises. But the forfeiture may be waived by the landlord's putting a distress into the premises, or by his accepting rent which became due subsequently to the alleged forfeiture.

SURRENDER.

"Surrender" is when the tenant yields up the premises to the landlord, and the landlord accepts them back from him. Of course it is unnecessary to say that the landlord's acceptance is quite optional. A tenancy for a term of more than three years, as it can only be created by a lease under seal (*i. e.* a deed), so it can only be surrendered either expressly by deed or impliedly by the lessee's accepting from the landlord a new lease. The rule is less strict as to tenancies not created by deed. But even a tenancy from year to

year cannot be surrendered and put an end to so as to bind either party, *merely* by the tenant's verbally stating his readiness to quit and the landlord's verbally giving him leave to go. The surrender and acceptance should be in writing. Where indeed there was a verbal agreement between a landlord and a tenant from year to year (under a written agreement) that the tenancy should be determined;—this, followed by the departure of the tenant, and by the entry and possession of the landlord, was held to amount to a surrender by operation of law. And the same has been also held in a case where, under similar circumstances, there was an agreement between the landlord, the tenant, and a third party, to substitute such third party as the tenant, and this was carried out by the old tenant quitting and the new one entering. And it may be said generally that where there is an agreement between the landlord, the tenant, and a third party, that the tenant shall leave, and that the third party shall come in *as the tenant* of the landlord, and then the possession of the premises is immediately changed in pursuance of the agreement; this will amount to a surrender of the original holding, and the first tenant will be discharged from liability on account of rent. But as it will be necessary to make out, *both* that there was an agreement of the kind we have mentioned, and that there was a change of possession in consequence and pursuance of it, and as doubts are very likely to arise as to the precise nature of what passed on the occasion of the alleged agreement, parties

cannot be too strongly advised not to trust to such loose and irregular modes of putting an end to tenancies, but to adopt the only regular course and have a proper written memorandum drawn up and signed whenever a tenant surrenders his tenancy, or one tenant is, with the assent of the landlord, substituted for another. Under no other circumstances can a tenant feel perfectly safe that, on giving up the premises, he is released from responsibility to his landlord.*

NOTICE TO QUIT.

No notice to quit is necessary where premises are let for a term certain, expiring on a fixed day. Where there is a tenancy from year to year—in the absence of any special agreement on the subject—it can only be terminated by a notice to quit on either side; such notice being given six months before the expiration of the current year of tenancy. But where a tenancy commences, and therefore also ends, on one of the usual quarter-days, a notice to quit given at the quarter-day last but one before that on which it is to expire, will be sufficient, although the interval may be a few days short of six calendar months. There is considerable doubt as to what notice would by law, and in the absence of any express stipulation on the subject, be necessary in the case of furnished lodgings let by the quarter, month, or week. Little practical inconvenience, however, arises from this, as custom

* For form, see Appendix, page 170.

nearly everywhere exacts a quarter's, month's, or week's notice in such cases; and where that is so, the courts will recognise and enforce it. If a tenant hold over after the expiration of his tenancy, paying double rent, under the 11th Geo. II. c. 19, no notice to quit is necessary on either side. Nor need a mortgagee give notice to quit to any tenant who became such without his consent subsequently to the mortgage; but he may at once proceed to bring ejectment. It is not necessary that a notice to quit should be in writing, unless the parties have expressly stipulated that it should be so. A landlord, however, who has given notice to his tenant, will not be able to claim double rent from him unless such notice was a written one. And there can be no doubt that the notice should in all cases be in writing, so that its contents may be readily proved, and their sufficiency established.

An agent merely employed to receive rents has no implied authority from his principal to give a notice to quit; but an agent entrusted with the general management and letting of the property has. He must have authority *at the time* the notice was given; for a subsequent ratification by the landlord will not make valid a notice originally given without authority. A notice to quit signed by one of several partners who are either landlords or tenants will be sufficient; but it would be better that it should, if possible, be signed by all.

A notice to quit must be clear and peremptory in its terms. If it is optional—giving the tenant the choice of going or of paying an increased rent—as, "I desire

you to quit or else that you agree to pay double rent" —it would be insufficient. But if the notice holds out the payment of double rent not as an alternative, but as a penal consequence which under certain statutes will attend the tenant's holding over, such a notice will be good.*

A notice to a tenant to "quit all the property you hold of me," is a sufficient description of the demised premises; and any general description applicable to the whole of the property will suffice. Nay, even a description to a certain extent erroneous will not vitiate a notice if it cannot mislead the party to whom it is given.

If a notice is handed to the tenant himself, it is not necessary that it should have a written direction or address; and if a notice is directed to the tenant by a wrong Christian name, and he keep it and do not send it back, he will be held to have waived the misdirection, and the lessor may enforce the notice, if there was no other tenant of the same name. A notice addressed to, and served upon, a tenant in actual possession will be sufficient. But where the person in possession is a mere servant of the true tenant, although the notice may be left with the servant, it must be addressed to the master. And if the notice be given to such servant, or if it be left—as it may—with a servant of the tenant at his dwelling-house, the person must be expressly

* For forms of notice, both with or without reference to double rent, and by both landlord and tenant, see Appendix, pp. 175–179.

told that it is a notice to quit, and must be desired to deliver it to his or her master. Notice to quit served upon a wife, on premises held by her husband, is sufficient. And where a notice to quit was put under the door of the house, but it was shown that it had come to the hands of the tenant before the time at which it was necessary that it should be given, it was held that a sufficient service was proved. If a tenant gives his landlord too short a notice to quit, the landlord, although he at first acquiesces in it, may ultimately refuse to accept it.

A tenancy is generally commenced on one of the usual quarter-days. If, however, a tenant comes in at any other day, and his rent is always paid at a quarter, half-year, or year, from that date, the notice to quit must determine on the anniversary of the day on which he entered. But if the tenant enters in the middle of a customary quarter, and after paying his rent for the remainder of it, then continues to pay from the commencement of the succeeding quarter, he is not tenant from the time of his coming in, but from the quarter-day next after his entry.

If premises are let on an agreement that either party may determine the tenancy by a quarter's notice, such notice must expire at the period of the year when the tenancy commenced; but where it is said that the tenant "is always to quit," or "may always quit," at three months' notice, this may be given so as to expire either on the same day of the year on which

the tenancy commenced, or on one of the quarter-days corresponding thereto.

Sometimes a landlord is doubtful on what day a tenancy ends. In that case, if it is known that it must end on one of two or three days, a notice may be given to leave on such day of the two or three (naming them) as the tenancy ends, taking care that the notice is given six months before the first; and then after the last day named, if the tenant have not quitted, the landlord will be justified in taking steps to eject him. Under these circumstances, or where still more uncertainty prevails, a notice to quit on a day named, or "at the expiration of the year of the tenancy which will expire next after half a year from the time of the service of this notice," will be perfectly good. But if *nothing* is known as to the time at which a tenancy commenced, it will not be safe to bring ejectment or take other measures to recover possession until the expiration of a year from the day on which the notice is served—for it is obvious that the tenancy might have commenced on the very day of the year on which the notice was served—and upon that supposition—which is the most unfavourable for the landlord that can be made—it would terminate on the anniversary of the service.

If, however, where the commencement of the tenancy is uncertain, the landlord applies to the tenant for information, the latter will be bound by his answer, and if he name a day, and a notice to quit is given accordingly, he cannot afterwards be permitted to show

that his holding did in fact begin on a different day.

When a house and land are let together at one rent, but are to be entered upon at various times, then (as different notices cannot be given for separate portions of premises held at one rent), the notice to quit must (in the absence of any express agreement) expire on the day upon which the tenant entered on that part of the premises which forms the principal subject of the letting; and it is a question for the jury which is the principal subject.

If a landlord should accept rent accruing due after the expiration of his notice to quit, this will be treated as a waiver of the notice, unless the landlord at the time declare, or circumstances then occurring show, that he did not intend it to operate as such, or unless fraud or contrivance were practised upon him by the tenant in making the payment.

But if the landlord *distrain* for rent accruing due subsequently, that will be an *absolute* waiver of the notice, and set up the tenancy again.

A second notice to quit is a waiver of the first; unless indeed it is merely a warning given after the expiration of a proper notice, that if the tenant do not quit forthwith, or in so many days, he will be called upon for double value.

And if a tenant retain possession of the premises after the expiration of a notice to quit given by him, such retention of the possession will in general amount

to a waiver of his notice. The landlord may, however, compel him to adhere to his notice or pay double rent.

When a railway company require land for the construction of their works, they may at any time give the tenant six months' notice to quit, but if such notice do not end with the current year of the tenancy he will be entitled to compensation, unless subsequently (and in reasonable time) informed by the company that he may remain to the end of the year.

CHAPTER XV.

CONSEQUENCES OF A TENANT'S HOLDING OVER.

At the expiration of a tenancy, or its determination by notice to quit, the tenant must peaceably deliver up to the landlord the premises which had been let or leased to him. If he do not, his full responsibilities as tenant will continue; measures may be taken for his expulsion; and he will also be liable—as a penalty for holding over—to the payment of double value or double rent, so long as he continues in possession.

By the 4th Geo. II. c. 28, s. 1, it is enacted, that if any tenant or tenants for lives or years, or any person or persons coming in under or in collusion with them, hold over any lands, tenements, or hereditaments, after the determination of their estates, and after demand made, and *notice in writing* given for the delivery of the possession thereof *by the landlord* or the person having the reversion or remainder therein, or the agent thereunto lawfully authorised, such tenant or tenants so holding over shall pay to the person so kept out of possession, at the rate of double the yearly value of the

lands, tenements, or hereditaments so detained, for so long a time as the same are detained.

This Act, as it will be seen, applies only where notice to quit is given by the landlord. Now the regular and ordinary notice to quit will, in the case of a tenancy from year to year, operate as a notice and demand under this Act. But a notice is requisite to enable the landlord to avail himself of the Act, even where the tenant holds for a term of years. Such notice may be given at any time either before or after the end of the term (provided that the landlord has not, by receipt of rent, or otherwise, recognised a new tenancy from year to year). In the first case it will operate (in case there is any holding over) directly the term expires; in the second, from the time it is served on the tenant.

The Act does not apply to tenancies for a shorter term than from year to year; nor to instances in which the tenant retains possession under a fair claim of right.

The double value cannot be recovered by distress, but it may by an action in the superior, or (if the amount claimed be not too large) in the county courts. The tenant cannot deprive the latter courts from jurisdiction by merely alleging that he has some claim to the premises, if it can be proved that he has admitted that he was tenant at the time the holding over commenced.

Another statute applies where the tenant himself gives notice and then holds over. By the 11th Geo. II. c. 19, s. 18, it is enacted, that in case any tenant or

tenants shall give notice of his or their intention to quit the premises, and shall not accordingly deliver up the possession thereof at the time in such notice contained, then the said tenants or tenant, his or their executors or administrators, shall from thenceforth pay to the landlord *double the rent* or sum which he, she, or they should otherwise have paid. This statute only applies to cases where a tenant has, from the nature of his holding, the power to give a notice to quit, and where he has, in fact, given a *valid* notice. It does not, like the 4 Geo. II. c. 28, render a notice *in writing* necessary. And also, unlike that, it apparently extends to the case of weekly, monthly, and quarterly tenancies.

The "double rent," payable under this Act, may be recovered by *distress*, as well as by action in the superior or county courts.

A tenant who holds over for a year after the expiration of a notice to quit—paying double rent—may then leave without giving a new notice.

CHAPTER XVI.

OF EJECTMENT AND THE RECOVERY OF TENEMENTS.

After the expiration of a term of years, or at the end of a notice to quit in the case of a tenancy thus determinable, a landlord may enter upon, and obtain possession of, the demised premises if they are vacant, or if he can do so peaceably. If at that time they are left locked up, and deserted by the tenant, he may break in. But if any one opposes him, he has no right to make a forcible entry; and even if he gets in peaceably, he must not turn the inmates out forcibly. If he does, he will, unquestionably, be liable to an indictment; and whether he will not also be liable to an action for assault, at the suit of the parties, is an unsettled and much controverted point of law. A proviso for re-entry may, indeed, be framed to give the lessor the right of forcible ejection, and to protect him from an action, as between himself and the lessee; but that will not take away the indictable offence. If the landlord desire to be perfectly safe, he must resort to one or other of the various methods of obtaining posssesion by legal proceedings.

Where the landlord has a right to enter in conse-

quence of the determination of the tenancy by any one of the means to which we referred in a former chapter, he may proceed, according to circumstances, to recover possession either by an action of ejectment in the superior courts, by a plaint in the county courts, or by an application to two magistrates or to a police magistrate. Now, *in all cases*,—whether the landlord has a right to enter into possession of any premises under any proviso for re-entry,* or in consequence of the expiration of the tenant's term, or from its having been forfeited, or surrendered, or been determined by a legal notice to quit,—he may proceed to recover such possession by bringing an action of ejectment in one of the superior courts. And this is still the *only* mode by which tenements can be recovered for breach of any of the conditions of re-entry (except for the non-payment of rent). In the case, however, of a term of years having expired, or been surrendered, or forfeited,† or of a tenancy having been determined by notice to quit, possession may be recovered, where the rent or annual value is below a certain amount, by proceedings either in the county courts, or, in a summary manner, before two justices, or a police magistrate. Proceedings may also be taken in the county courts, when the landlord has a right to re-enter, for non-payment of rent. We shall not enter into a description of the proceedings in an action of ejectment in the superior courts, because they are always undertaken and carried on under professional advice and assistance.

* See page 123. † See page 122.

Those before the inferior judicatures were, however, intended by the Legislature to be conducted—and they frequently are, and may generally be, successfully conducted—by a landlord or his agent. In respect to these, it will, therefore, be useful to enter into such details as may enable a landlord to see when and how they may be taken with effect. We commence with

THE PROCEEDINGS IN COUNTY COURTS.

The jurisdiction of county courts to entertain proceedings for the recovery of small tenements is now defined by the last County Court Act, the 19th & 20th Vict. c. 108 (passed in the session of 1856). By the 50th section of that Act it is provided that "when the term and interest of the tenant of any corporeal hereditament [*i. e.* lands, houses, or any other premises], where neither the value of the premises, nor the rent payable in respect thereof, shall have exceeded £50 by the year, and upon which no fine or premium shall have been paid, *shall have expired, or shall have been determined, either by the landlord or the tenant, by a legal notice to quit*, and such tenant, or any person holding or claiming by, through, or under him, shall neglect or refuse to deliver up possession accordingly, the landlord may enter a plaint at his option either against such tenant, or against such persons, so neglecting or refusing, in the county court of the district in which the premises lie, for the recovery of the same, and thereupon a summons shall issue to such tenant or such person so neglecting or refusing, and if the defendant shall not

at the time named in the summons show good cause to the contrary, then upon proof of his still neglecting or refusing to deliver up possession of the premises, and of the yearly value and rent of the premises, and of the holding and of the expiration or other determination of the tenancy, with the time and manner thereof, and of the title of the plaintiff, if such title has accrued since the letting of the premises, and of the service of the summons if the defendant do not appear thereto, the judge may order that possession of the premises mentioned in the plaint be given by the defendant to the plaintiff, either forthwith or before such day as the judge shall think fit to name, and if such order be not obeyed the registrar [*i. e.* of the county court], whether such order can be proved to have been served or not, shall, at the instance of the plaintiff, issue a warrant authorizing and requiring the high-bailiff to give possession of such premises to the plaintiff."

And by the 51st section it is provided that to any plaint issued under the last section, the plaintiff may add a claim for rent or mesne profits,* or both, down to the day appointed for the hearing, or to any preceding day named in the plaint, but so that the same shall not exceed £50.

Then by the 52nd section, which relates to ejectment *for the non-payment of rent*, it is provided "that when the rent of any corporeal hereditament, where neither

* By *mesne profits* is meant any profits which the tenant may have made out of the premises during the time he has wrongfully detained them from the landlord.

the value of the premises nor the rent payable in respect thereof exceeds £50 by the year, shall for one half-year be in arrear, and the landlord shall have right by law to re-enter for the non-payment thereof, he may, without formal demand or re-entry, enter a plaint in the county court of the district in which the premises lie for the recovery of the premises, and thereupon a summons shall issue to the tenant, the service whereof shall stand in place of a demand and re-entry; and if the tenant shall, five clear days before the return day of such summons, pay into court all the rent in arrear and costs, the said action shall cease, but if he shall not make such payment, and shall not, at the time named in the summons, show good cause why the premises should not be recovered, then upon proof of the yearly value and rent of the premises, and of the fact that one half-year's rent was in arrear before the plaint was entered, and that no sufficient distress was to be found on the premises to countervail such arrear, and of the landlord's power of re-entry, and of the rent being still in arrear, and of the title of the plaintiff if such title has accrued since the letting of the premises, and of the service of the summons if the defendant shall not appear thereto, the judge may order that possession of the premises mentioned in the plaint shall be given by the defendant to the plaintiff on or before such day, not being less than four weeks from the day of hearing, as he shall think fit to name, unless within that period all the rent in arrear and the costs be paid into court; and if such order be not obeyed, and

such rent and costs be not so paid, the registrar shall (whether such order can be proved to have been served or not), at the instance of the plaintiff, issue a warrant, authorising and requiring the high-bailiff of the court to give possession of such premises to the plaintiff, and the plaintiff shall, from the time of the execution of such warrant, hold the premises discharged of the tenancy, and the defendant, and all persons claiming by, through, or under him, shall, so long as the order of the court remains unreversed, be barred from all relief in equity or otherwise."

It must be carefully remarked that this section only applies to instances in which the lease or agreement expressly gives the landlord a power to re-enter in case of non-payment of rent.

The 53rd section provides that if any summons is served upon or comes to the knowledge of any sub-tenant of the plaintiff's immediate tenant, such sub-tenant (*i. e.* of the whole or part of the premises sought to be recovered) must, under penalty of forfeiting to his immediate landlord three years' rack rent, give him notice of the summons, so that he may come in and defend his right to the possession.

The hearing of the plaint in the county court may be either with or without a jury, and in conducting his case the plaintiff must be careful to be prepared with and to adduce the proof rendered necessary by and specified in either the 50th or 52nd sections—under whichever the proceedings are taken. Judgment having been given, notice of it will be served upon the

tenant if it is adverse to him; and if he do not yield up possession, the registrar of the court, as we have already seen, will, on the application of the plaintiff, issue a warrant to the high-bailiff of the court, requiring him to put the plaintiff in possession of the premises. The warrant is to be in force for three months from the day named for the delivery of possession, but "no entry upon any such warrant shall be made except between the hours of nine o'clock in the morning and four o'clock in the afternoon."

As the entry under this warrant determines the tenancy, no distress can then or afterwards be made for rent in arrear, though goods be found on the premises. But for the same reason, the tenant has no longer the right to remove any fixtures, while he is, of course, still liable to an action for the unpaid rent.

As regards the liability of the landlord who proceeds under the 50th or 52nd sections to recover possession from the tenant or occupier by entering under the warrant of the court, it is by the 60th section enacted "that no person at whose instance any such warrant shall be executed, shall be deemed a trespasser by reason of any irregularity or informality in any proceeding on the validity of which such warrant depends, or in the form of such warrant, or in the mode of executing it, but the party aggrieved may bring an action for any special damage which he may have sustained by reason of such irregularity or informality, against the party guilty thereof, and in such action he shall recover no costs unless the damage awarded shall exceed 40*s*."

The object of the preceding section is to protect the landlord, or person acting on his behalf, from vexatious litigation at the suit of the party evicted, and to prevent actions from being brought in respect of any irregularity or informality in the mode of proceeding, unless substantial damage has been sustained.

Where the rent or value of the premises sought to be recovered exceeds £20, either the plaintiff or defendant, if dissatisfied with the decision of the county-court judge, in point of law, or in respect to the admission or rejection of any evidence, may, under the 68th section of the late Act, appeal to any of the superior courts at Westminster. He must, however, give notice of his intention within ten days after such decision to the other party, or his attorney. And further, he must, at his own cost, give security (to be approved by the registrar of the court) to the other party for the costs of the appeal. The security (section 70) is to be in the form of a bond with sureties, to the other party. But (by section 71), whenever a security is required to be given, a deposit of money, to the amount for which the security would be required, may be made, in lieu thereof, with the registrar of the county court.

It is hardly necessary to observe that these proceedings are applicable to the cases of the tenants or occupiers of either furnished or unfurnished apartments whose tenancy has been regularly terminated by a proper notice to quit, or who are in arrear half a year's rent.

A tenant cannot at the hearing of the cause deny that the landlord under whom he entered had, at the time of his entry, a right to the premises; but he may assert and endeavour to show that such title had expired before the proceedings in ejectment were commenced, and this defence, if made *bonâ fide*, will oust the jurisdiction of the county court, unless both parties agree to give it jurisdiction.

PROCEEDINGS BEFORE MAGISTRATES.

In addition to his remedy by plaint in the county court, the landlord may resort to summary proceedings before the justices of the peace, in cases where premises are held over. By the 1st and 2nd Vict. c. 74, s. 1, it is enacted that "when, and so often as the term or interest of the tenant of any house, land, or other corporeal hereditament held by him at will, or for any term not exceeding seven years, either without being liable to rent, or at a rent not exceeding £20 a year, and upon which no fine shall have been reserved or made payable, shall have ended or been duly determined by a legal notice to quit, or otherwise; and such tenant, or any person by whom the same, or any part thereof, shall be then occupied, shall neglect or refuse to quit or deliver up possession of the premises, or such part respectively, it shall be lawful for the landlord or his agent to cause such person to be served with a written notice,* signed by the landlord or agent of his intention to proceed under this Act; and if the tenant shall not appear and show to

* For form, see Appendix, page 179.

the justices reasonable cause why possession should not be given to the landlord, and shall neglect or refuse to deliver up possession, it shall be lawful to give proof to the justices of the holding, and of the ending or determination of the tenancy, with the time or manner thereof, and (if the landlord's title have accrued since the letting of the premises) of the right by which he claims possession; and upon proof of the service of the notice, and of the neglect or refusal of the tenant or occupier, as may be, it shall be lawful for the justices acting for the district, division, or place within which the said premises, or any part thereof, shall be situated, in petty sessions assembled [or, in the metropolis, the police magistrate of the district], to issue a warrant under their hands and seals to the constables or peace officers of the district, commanding them, within a period not less than twenty-one, nor more than thirty clear days from the date of such warrant, to enter into the premises and give possession to the landlord, provided that the entrance on such warrant shall not be made on a Sunday, Good Friday, or Christmas Day, or at any other hour than between nine and four o'clock in the day." Section 2 provides that notices of intended proceedings under this Act shall be served either personally or by leaving them with some person being in, and apparently residing at, the place of abode of the person holding over (such person having first had the notice read over to him, and its purport explained); or if the person holding over cannot be found, or his abode is not known, or admission cannot be obtained, then it is

to be a good service if the notice is posted up on some conspicuous part of the premises held over. Then by the 3rd section it is enacted that the mere fact of obtaining such a warrant, by a person not lawfully entitled to the possession of the premises, shall be deemed a trespass; and that the execution of such a warrant shall be stayed, if the tenant or occupier will give satisfaction to the justices by a bond signed by himself and two sureties, to sue the person to whom such warrant was granted, with effect and without delay, and to pay the costs of such action if unsuccessful. But by section 6, when a landlord has a lawful title, he shall not be deemed a trespasser by reason of any irregularity in the proceedings, but shall only be liable to an action on the case for the particular and special damage resulting from the irregularity. And if the jury do not assess such damage at a greater sum than five shillings, the plaintiff shall have no more costs than damages, unless the judge certifies that, in his opinion, full costs should be allowed.

We have gone thus at length into the provisions of this Act because, under some circumstances, it may be convenient to resort to it. But there can be no doubt that it will in general be found more advantageous to take proceedings in the county court.

It will be remarked that this Act contains no provision for the recovery of tenements for the nonpayment of rent; and it limits the powers of justices to cases where the rent is £20 or less, while the county-court judge has jurisdiction up to £50.

By the landlord's entry under this Act the tenancy is determined. If, therefore, he finds any goods on the premises, he cannot distrain upon them, but must allow them to be taken away. He may, however, sue for the unpaid rent; and may detain any fixtures belonging to the late tenant.

CHAPTER XVII.

RECOVERY OF DESERTED PREMISES.

THE proceedings to be taken for the recovery of premises which the tenant has deserted before the termination of his tenancy, and without giving proper notice to quit, or leaving any goods on which the landlord may distrain for his rent—are founded on two statutes —the 11th Geo. II. c. 19, s. 16, and the 57th Geo. III. c. 52, which, read together, enact, that if any tenant holding any lands, tenements, or hereditaments, at a rack rent or a reserved rent of full three-fourths of the yearly value of the demised premises, who shall be in arrear for half a year's rent, shall desert the premises, and leave the same uncultivated and unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall be lawful for two or more justices of the peace for the county, riding, division, or place (having no interest in the demised premises), at the request of the lessor, or his bailiff, to go upon and view the same, and cause to be affixed on the most notorious part of the premises, notice, in writing, what day (at the distance of fourteen days at least) they will return to take a second view thereof; and if upon such second view, the tenant, or some person on his behalf, shall

not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the justices may put the landlord into the possession of the demised premises; and the "lease thereof* to such tenants, as to any demise therein contained only, from shall thenceforth become void."

Under section 17 of the 11th Geo. II. c. 19, proceedings before the justices under this Act are examinable in a summary way, by the judges, at the next assizes holden in the counties where the premises lie, or if they lie in the city of London, or county of Middlesex, then by the judges of the Courts of Queen's Bench, or Common Pleas; and such judges are empowered, if they think fit, to direct the premises to be restored to the tenant, and to make an order for his costs upon the landlord; or, in case they affirm the order of the justices, to compel the tenant to pay his landlord a sum not exceeding £5, as the costs of such frivolous appeal.

The 57th Geo. III. c. 52, contains one very important enactment, to which it is desirable to draw particular attention, as it is applicable to the greater number of cases in which it is necessary to put these Acts in operation; and constitutes the reason why a resort must often be had to the magistrates rather than to the county courts. The latter can only restore possession for default of payment of rent—even should the premises be vacant—if the landlord have by law (*i. e.* from a covenant on the lease or stipulation in an agree-

* As to the effect of these words, see the first paragraph on page 151.

ment) a right to re-enter for such non-payment of rent; but the 57th Geo. III. c. 52, enacts that the powers conferred upon the justices by that Act, and by the 11th Geo. II. c. 19, shall extend to the case of tenants "who shall hold over lands and tenements and hereditaments held under any demise or agreement, either written or verbal, and although no power or right of re-entry be either reserved or given to the landlord in case of non-payment of rent."

The mode of procedure under these Acts, in respect to what is to be done by the justices, is somewhat different in the metropolis, for, by the 3rd and 4th Vict. c. 84, it is enacted, that in every case within the metropolitan police district it shall be lawful for a police magistrate, at the request of the landlord or bailiff, made in open court, and upon proof being given of the arrear of rent and of the desertion of the premises by the tenant, to issue his warrant to one of the police constables, requiring him to view the premises and affix the notices, and upon return of the warrant and proof that it has been duly executed, and that neither the tenant nor any person in his behalf has appeared and paid the rent, and that there is no sufficient distress upon the premises, it shall be lawful for the magistrate to issue his warrant to a constable of the metropolitan police force, requiring him to put the landlord into possession; and upon the execution of such second warrant, the "lease of the premises to such tenant as to any demise contained therein only, shall *henceforth* be void."

The meaning of these last words, "the lease, &c.," which, it will be observed, also occur in the 11th Geo. II. c. 19, and are therefore universally applicable throughout the kingdom, mean that although by the execution of the warrant a lease or agreement is annulled so far as it gives the tenant any right to the possession of the premises, no *liabilities* which he may have incurred under it in respect to payment of rent, repairs, &c., are at all affected, but that he may still be sued in respect thereof if he can be found.

It will also be observed that by all these statutes the magistrates are to act "at the request" of the landlord or his agent. No informations on oath need therefore be laid before them by the landlord; nor need they make any inquiry upon oath; they may act upon the mere statement of the landlord that rent is due, satisfying themselves *upon their own view* (or, in the metropolis, by the view of the policeman) whether or not the premises are deserted, and whether or not there is sufficient distress upon them to satisfy the rent.

As there is occasionally some little difficulty in saying whether the premises are "deserted," and as it is impossible to lay down any serviceable definition, it may be well to refer to two cases, which show practically the manner in which the courts are disposed to construe the Act. When a tenant ceased to reside on the premises for several months, and left them without any furniture or sufficient other property to answer the year's rent, it was held that the landlord might properly proceed under the statute to recover possession; al-

though he knew where the tenant then was, and although the justices, when they first went to view the premises, found there a servant who said that his master was trying to let them. But, on the other hand, where the tenant left his wife and children in the house, but took away his furniture and went away himself, it was held that there was no desertion. Of course if the premises are left entirely unoccupied no difficulty can arise; and, on the other hand, while sufficient property is left to cover any distress for accruing rent, no proceedings can be taken under these Acts.

It is very doubtful whether a landlord can proceed under these Acts if the tenant have any set-off against the rent.

When the magistrates have given to the landlord possession of property as deserted and unoccupied, and the judges of assize have, on an appeal to them, made an order for its restitution to the tenant with costs, the record of the proceedings before the magistrates will be a good defence on the part of the landlord, should the tenant afterwards bring an action of trespass against him.

APPENDIX.

APPENDIX.

1.

AGREEMENT FOR LETTING AN UNFURNISHED HOUSE ON A YEARLY TENANCY.

Memorandum of an agreement made and entered into this day A. D. 185 between A. B. of of the one part, and C. D. of of the other part.

The said A. B. doth hereby agree to let, and the said C. D. to take, all that messuage, tenement, or dwelling-house, with the appurtenances, situate and being No. in street,* in the parish of in the borough of† in the county of ( ) [for the term of one year from the date hereof, and so on, from year to year] *until one of the said parties shall give unto the other, in writing, six‡ calendar months' notice to quit*, at and under the yearly rent of *l.* payable without deduction, except on account of the landlord's property and income tax, in equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in each year; the first quarterly payment to be made on the day of next.

* "Lane," "road," "place," &c., as the case may be.

† If not in a borough say "city," "town," &c., as the case may be, or omit these or any corresponding words altogether if the parish is merely a part of the county.

‡ Or *three*, as the case may be.

And* the said C. D. doth hereby agree with the said A. B. that he, the said C. D., his executors or administrators, shall and will, from time to time, during the period that he or they shall continue to occupy the said messuage and premises, under this agreement, keep repaired, at his or their own expense, all the windows, window-shutters, doors, locks, fastenings, bells, and all other fixtures in, upon, and belonging to the said premises, and leave the same in as good repair and condition as the same are now in—reasonable wear and tear, and accidents by fire, flood, and tempest, only excepted (*a*). In witness whereof the said parties hereunto have set their hands the day and year above mentioned.

A. B.
C. D.

[The effect of the above agreement will be to create a tenancy for at least *two* years in the first instance; that is, no notice to quit can be given until the expiration of a year and a half from the commencement of the tenancy. If it is desired that the tenant or landlord should be at liberty to give six months' notice, so as to determine the tenancy at the end of the first year, omit the passage between brackets, and insert, "from the date hereof, from year to year;" and also after the word "quit," immediately afterwards, say, "in the first or any subsequent year of the tenancy." The tenant, as this instrument is drawn, will have to pay all rates and taxes, (including the land tax), except the property tax: if any further exceptions are to be made, insert them after the words "income and property tax." If it is agreed, as is both reasonable and desirable, that the landlord should keep the external part of the premises (except the windows and doors) in good repair, then, at the place indicated by (*a*) insert these words: "And the said A. B. agrees to keep all the external parts of the said premises, other than

* This clause ending at (*a*) may be omitted if it is not thought *desirable to have* any stipulation of the kind.

the windows and doors, in good repair." If it is intended that the tenancy should be determinable not only by a notice to quit ending on the anniversary of the day when the tenancy commenced, but by a three or six months' notice to quit terminating at either half-year or at any quarter, then substitute the words, "from the date hereof, from year to year," for the passage in brackets; and in place of the words in italics say, "until the expiration of a *three* [or *six*] months' notice to quit, which shall at any time be given by either of the said parties to the other of them, in the first or any subsequent year of the tenancy." Although such a provision is, perhaps, not generally inserted in agreements for a yearly tenancy, it is very convenient for the landlord to have a proviso for re-entry in certain cases. It may be in these terms, and should be inserted immediately before the "In witness whereof," &c. "Provided always, that if the rent hereby reserved shall (being demanded) be in arrear for more than twenty days next after any of the said quarterly days on which the same is payable, or if the tenant shall, after notice, refuse to observe and perform the agreements and conditions hereinbefore mentioned, or shall assign, underlet, or part with the possession of the said premises without the consent in writing of the said A.B., his heirs, executors, or assigns, then this demise shall cease and be void, and it shall be lawful for the said A.B., his heirs, executors, and assigns, or his or their agent, to re-enter upon the said premises, and the same to have and enjoy as if this agreement had never been made." As this agreement operates as an actual lease, it must be stamped as such.* If the house is one let at a low rent, the stamp on a lease will be smaller than on an instrument operating as a mere agreement. In houses of larger size, the advantage may be the other way. If it is thought a matter of any importance to save the difference which may in such case exist in favour of the stamp on an instrument operating as an agreement, the following words—"And

* See chapter v., page 36.

lastly, it is hereby agreed that this instrument shall operate as an agreement for a lease, and not as a lease," may be inserted at the end of the document, immediately before the words, "In witness," &c. But for the reasons which have been stated in a former chapter, it is not by any means recommended that this alteration should be made.]

2.

AGREEMENT FOR LETTING A FURNISHED HOUSE ON A YEARLY TENANCY.*

Memorandum of an agreement entered into this day of , 18 , between A. B., of &c., of the one part, and C. D., of &c., of the other part.

The said A. B. doth hereby agree to let, and the said C. D. to take, all that messuage, tenement, or dwelling-house, with the appurtenances, situate and being No. , in street, in the parish of , in the borough of , in the county of , for the term of one year from the date hereof, and so on from year to year, until one of the said parties shall give unto the other in writing calendar months' notice to quit, at and under the yearly rent of *l.*, payable, *without deduction, except on account of the landlord's property and income tax*, in equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in each year, the first quarterly payment to be made on the day of next. And it is also agreed between the said A. B. and C. D., that the said C. D. shall and may use and enjoy in and upon the said messuage and premises and not elsewhere the fixtures, furniture, and other effects belonging to the said C. D., now therein and thereupon

* This form can, with the assistance of the one following, be *readily adapted* to a letting for a fixed term.

[and specified in the schedule hereunder written,]* during such time as the said C. D., his executors or administrators, shall continue to occupy the same, and that the said C. D., his executors and administrators, shall pay unto the said A. B., his executors, administrators, and assigns, for the use of the said fixtures, furniture, and other household effects, the sum of *l.* a year, in addition to the said yearly rent of *l.*, by four equal quarterly payments on the days and times hereinbefore appointed for the payment of the said rent; and that the said additional rent, or yearly sum of *l.*, payable for the use of the said fixtures, furniture, and other household effects, shall or may be distrained for on the said messuage and premises by the said A. B., his executors, administrators or assigns, in the same or like manner as if the same sum of *l.* was reserved to be paid out of the said messuage and premises (*a*). And the said C. D. doth hereby agree with the said A. B., that he, the said C. D., his executors or administrators, shall and will from time to time during the period that he or they shall continue to occupy the said messuage and premises under this agreement keep repaired, at his or their own expense, all the windows, window shutters, doors, locks, fastenings, bells, and all other fixtures in, upon, and belonging to the said premises, and leave the same in as good repair and condition as the same are now in, reasonable wear and tear and accidents by fire, flood, and tempest only excepted; and also shall and will keep, and at the expiration of the said term leave the said household furniture and utensils (reasonable wear and tear and accidents by fire, flood, storm, and tempest only excepted) in as good a state and condition as the same are now in, and will also make good and supply the place of any of the said articles of furniture that may be broken, lost, or destroyed during the said term (*b*), Provided always, that if either the rent hereby reserved, or the yearly

* If the schedule is not to be annexed to, or written on the same paper as, the agreement, say "and specified in a schedule bearing even date with this agreement." See *Note* on the next page.

sum made payable in respect of the use and occupation of the said fixtures, furniture, and household effects, shall be in arrear for the space of twenty days next after any of the said quarterly days of payment whereon the same is payable as aforesaid (being demanded), or in case any of the articles hereby demised shall be taken in execution of any process against the goods of the said C. D., his executors or administrators (*c*), then this demise shall thereupon cease and be void, and it shall be lawful for the said A. B., his heirs, executors, administrators, or assigns, to re-enter upon the said premises, and the same, and the fixtures, household furniture, and other effects therein and thereupon, to possess and enjoy as if this agreement had never been made. In witness whereof, &c. (as in the preceding form).

[*Insert at foot the schedule above referred to if it is determined to have one, but see the following note.*]

[NOTE.—It is desirable that an agreement for the letting of a furnished house should be very stringent and precise in its provisions, both on account of the possibility that, on the death of the lessor, the house and the furniture may pass to different parties; and also on account of the lessor's having most likely no substantial remedy by distress for his rent, and being exposed to considerable risk of loss in case his furniture should be taken in execution for the tenant's debts. If one entire rent were reserved for both house and furniture, then, on the death of the lessor, in the case alluded to, the person entitled to the house would take the whole rent, and the person entitled to the furniture would derive no benefit from it until the termination of the tenancy. Again, if no special power to distrain for rent of furniture were inserted, this remedy would not be available in respect of it, whatever valuable property the tenant might have on the premises. And in the absence of the proviso for re-entry, it does not appear that, if the furniture were taken in execution, the landlord would have any remedy until the tenancy was regularly determined. Any of the alterations with respect to the duration of the holding, time of notice, &c.,

to which we adverted in the last note, can be easily made in this form, as it will be seen that, in the parts to which they apply, the language of the two instruments is precisely similar. Some special modifications are, however, sometimes inserted in an agreement for the letting of a furnished house. It is not unusual in such a case for the lessor to pay rates and taxes. If that is agreed upon, omit the words *in italics*, "without deduction, except on account of the landlord's property and income tax," and at (*a*) insert, "And the said A. B. doth agree to pay and discharge all rates, taxes, assessments, and impositions whatsoever, payable in respect of the said premises, or chargeable upon the owner or occupier in respect thereof." In order to prevent valuable furniture getting into bad hands, the tenant is sometimes called upon to stipulate that he will not underlet the premises without the licence of the landlord; in such a case, insert at (*b*) the following words:—"And will not assign, under-let, or part with the possession of the said premises without the consent, in writing, of the said A. B., nor will let any portion thereof as lodgings, nor use the same other than and except as a private dwelling-house." Then if this stipulation is inserted, it must be carried out by the addition, to the proviso for re-entry at (*c*), of the words "and in case the said C. D., his executors or administrators, shall assign, underlet, or part with the possession of the said premises, or let lodgings, or use them other than as a private dwelling-house, without such licence as aforesaid." We have inserted in the agreement a reference to a schedule, because in all cases it is convenient to have one; and in many it may entail no additional expense, or none worth consideration. In case the schedule be annexed to, or written on, the same paper as the agreement it will, for the purpose of the stamp duty, be considered as part of it. So that if the agreement and schedule together contain only 2160 words, a simple *ad valorem* lease stamp, or a half-crown agreement stamp, will be sufficient; while, if there is more

than that number of words, a progressive duty is incurred by every 1080 words beyond the first.* If, therefore, no more than 2160 words altogether are used, a schedule entails no additional expense, while, beyond that number, the extra cost will be easily calculated. The stamp duty, on schedules *not annexed* to the lease or agreement, will be seen at page 39. If it is determined not to have a schedule, then have a catalogue of the furniture and fixtures made out in duplicate, and signed by both landlord and tenant. That will avoid any dispute as to what the house actually contained at the time of the letting. In such case omit the words contained in brackets. Another point is well worthy of attention. Persons are often let into possession of furnished houses, of whom comparatively little is known, and whose mode of using furniture cannot be foretold; and it is clear, that if their occupancy goes on from year to year, or even continues for a single year, irreparable damage may be done. It is therefore very desirable that the landlord should reserve to himself the power of going upon the premises at least twice a year to inspect them, see what repairs are necessary, and whether the tenants are such as he would desire to keep, or whether his interest requires that he should give them notice. In case it is thought worth while to adopt this suggestion, insert the following words immediately before the proviso for re-entry (*i. e.* the passage beginning "Provided always, &c."). "And also that it shall be lawful for the said A. B., his heirs, executors, administrators, or assigns, or his or their agent or agents, twice in every year during the time that he, the said C. D. or his executors, administrators, [or assigns]† shall occupy the said premises, to enter into or upon the same in order to view their condition and state of repairs, and also that of the said furniture and fixtures. And in case the said A. B., his heirs, executors, administrators,

* See chapter v., page 38.

† Omit these words in brackets if you insert the stipulation, page *161, against the* tenant's assigning or under-letting.

or assigns, or his or their agent, shall discover that any repairs which by this agreement are to be made by the tenant are requisite, or that any of the said articles of furniture have been damaged, destroyed, or lost (fair wear and tear, and accident by fire, flood, storm, and tempest only excepted), and shall give notice thereof in writing to the said C. D., his executors, administrators, [or assigns] * or leave the same upon the said demised premises, requiring him or them to make such repairs, amend such damage or destruction, or supply such loss; then the said C. D., his executors, administrators, [or assigns] * will, within the space of one calendar month next after the delivery of such notice, repair and amend such damage or destruction, or supply such loss accordingly."

3.

AGREEMENT FOR LETTING A HOUSE FOR THREE YEARS.

Memorandum of an agreement made and entered into this day of , between A. B., of &c., of the one part, and C. D., of &c., of the other part.

The said A. B. doth hereby agree to let, and the said C. D. to take, all &c. [*describe premises as in first form*], for the term of three years from the date hereof, at and under the yearly rent of *l.*, payable, without deduction, except on account of the landlords' property and income tax, in equal quarterly payments, on the 25th day of March, the 24th day of June, the 29th day of September, and the 25th day of December, in each year; the first quarterly payment to be made on the day of next. And the said C. D. doth hereby agree with the said A. B., that he, the said C. D., his executors or administrators, shall and will from time to time, during the period that he or they shall continue to occupy the said messuage or

* Omit these words in brackets if you insert the stipulation, page 161, against the tenant's assigning or under-letting.

premises under this agreement, keep repaired at his or their own expense all the windows, window-shutters, doors, locks, fastenings, bells, and all other fixtures, in upon, and belonging to the said premises, and all the internal parts thereof, and so leave the same at the end of the said term (reasonable wear and tear, and accidents by fire, flood, and tempest only excepted); and also that he will not assign, under-let, or part with the possession of the said premises without the consent in writing of the said A. B., nor use the same other than and except as a private dwelling-house. And the said A. B. agrees to keep all the external parts of the premises in good repair, Provided* always, that the said term hereby agreed to be granted shall cease and determine, and the said A. B., his executors, administrators, or assigns, shall have an immediate right of entry in case the rent hereby reserved shall (being demanded) be in arrear more than twenty days next after any of the said quarterly days on which the same is payable, or in case the said C. D., his executors or administrators, shall, after notice, refuse to observe and perform the agreements and conditions hereinbefore mentioned, or shall assign, under-let, or part with the possession of the said premises without such licence as aforesaid, or in case the said C. D. shall become bankrupt, or take, or attempt to take, the benefit of any Act for the relief of insolvent debtors, or shall permit any writ of execution to be levied on his goods. In witness, &c. (as in first form).

NOTE.—If it is desired to modify the liabilities of the landlord and tenant in respect to the payment of rates and taxes, or otherwise, the directions given in the notes to the first and second forms will easily enable any one to make the requisite alterations. The most important point to notice in connection with the present form is this: We have stated† that an actual lease or letting to endure for more

* The proviso, or any clause of it which may be thought undesirable, *can be omitted.*

† See chapter ii., page 15.

than three years from the making thereof must be by deed; and if an instrument intended to operate as an actual lease be void because not a deed, it will not now be supported as an agreement for a lease. Consequently, if it is desired to make the term commence on a day subsequent to the execution of an instrument intended to operate as a letting for three years, such instrument must either be a deed or must be made to operate as an agreement, and not as an actual lease (which the form, as it stands above, would do). To effect this, the words "and lastly it is hereby agreed that this instrument shall operate as an agreement for a lease and not as a lease," must be inserted immediately before the words "In witness," &c.

4.

AGREEMENT FOR LETTING FURNISHED LODGINGS.

Memorandum of an agreement made and entered into this 1st day of June, 18 , between A. B., of , of the one part, and C. D., of , of the other part, by which the said A. B. agrees to let to the said C. D., from week to week, from the date aforesaid, the drawing-room and bed-room on the first floor in his the said C. D.'s house in street aforesaid, ready furnished, and to supply the usual and customary attendance of his servants, in common with the other lodgers in the said house; together with the use of such linen, plate, glass and china, as are requisite, and as are reasonably fit and appropriate to a lodger occupying furnished apartments of the class in question, at the rent of *l.* per week. And the said C. D. agrees to take the said rooms as aforesaid, with attendance and use of linen, plate, glass and china, as aforesaid, at the rent aforesaid; and he further agrees that, if he shall damage or break any of the said furniture, linen, plate, glass and china, of the said A. B. (damage by fair wear and tear only excepted),

he will repair the same in such a manner as to restore them to their present condition and value, or will replace them by other articles of a similar description and of equal value to those damaged or destroyed. And it is further agreed that either party may determine the said tenancy at a week's notice. In witness, &c.

[NOTE.—The description of the rooms let must be made correct.]

5.

SHORT FORM FOR THE LETTING OF SMALL TENEMENTS.

Memorandum of an agreement made and entered into the day of , 18 , between A. B. of &c., and B. C. of, &c.

The said A. B. hereby lets, and the said C. D. takes, the dwelling-house, No. , street, from the date hereof, from [quarter]* to [quarter],* at the rent of *l.* per [quarter],* the said A. B. paying all rates and taxes. And it is also hereby agreed that the said C. D. shall make good all damage done to the windows, doors, shutters, and other fixtures belonging to the said dwelling-house while it is in his occupation (reasonable wear and tear, and accidents by fire and tempest, only excepted), and that the tenancy hereby created shall be determinable at a [quarter's]* notice by either landlord or tenant. (*a*) In witness, &c.

6.

FORM FOR THE LETTING OF SMALL TENEMENTS, WITH VERY STRINGENT PROVISIONS FOR EVICTION IN CASE OF NON-PAYMENT OF RENT.

[Copy the preceding form to the point (*a*) and then proceed] And it is further agreed that if the rent or any part thereof shall be unpaid on any day on which the

* Or month.

same shall be due, or within days afterwards, or if the said [the tenant] shall not at all times observe and keep the several conditions and agreements hereinbefore mentioned, or quit and deliver up possession of the house according to notice, then, in either of such cases, and, without any demand whatsoever, it shall be lawful for the said [the landlord] or his agent immediately to enter upon and take possession of the house and premises, and the said [the tenant], and all persons claiming under him for ever, to expel and remove therefrom without any legal process whatever, and as effectually as any sheriff might do in case the said [the landlord] had obtained judgment in ejectment for the recovery of possession thereof, and a writ of *habere facias possessionem*, or other process, had issued on such suit, directed to such sheriff in due form of law, and that in case of such entry and of any action being brought, or other proceedings taken for the same, by any person whensoever, the said [the landlord] or his agent may plead leave and licence in bar thereof, and that this agreement may be used as conclusive evidence of the leave and licence of the said [the tenant], and of all persons claiming under him for ever, to the said [the landlord], and all persons acting therein by his order for the entry or trespass, or other matters to be complained of, in such action or other proceedings. In witness, &c.

NOTE.—This is a very suitable form for the use of owners of small tenements. They should have it printed or lithographed, and compel all their tenants, on entering, to execute a copy. By this means they will have the power of ejecting them without legal process if their rent is not regularly paid, or they refuse to quit on notice. If no more force than necessary is used, the landlord will be protected by this agreement from any action at the suit of the tenants. He would probably still remain *liable* to an indictment if force were used, but when the eviction is properly conducted, the risk of this is practically so slight that it may generally be safely

disregarded. Even should one be preferred, the sentence would no doubt be limited to a nominal fine, unless undue violence had been used. And in nearly every instance a tenant who has signed such an agreement will go out peaceably without putting the landlord to the use of any force whatever. Of course this clause may, though peculiarly appropriate to the case of small tenements, be inserted in agreements for the letting of any class of houses.]

7.

AGREEMENT FOR THE LEASE OF A DWELLING-HOUSE.

Memorandum of an agreement made and entered into the day of , A.D. 18 , between A. B. of &c., of the one part, and C. D. of &c., of the other part, whereby the said A. B., for himself, his heirs, executors, and administrators, doth agree to grant, and the said C. D., for himself and his executors and administrators to take, a lease by indenture of all that [*describe the premises and their situation as in previous forms*] for the term of years, at the yearly rent of *l.*, payable by four equal payments, clear of all existing and future taxes, rates, deductions, and outgoings whatever, on the four usual quarter days,* the first quarterly payment to be made on the day of next. And it is further agreed that the said lease shall contain covenants on the part of the said C. D., his executors and administrators, to pay rent, taxes, and rates; and also to keep the said premises during the said term, and deliver them up at its expiration, or sooner determination, in as good a state of repair and condition as they now are in (fair wear and tear only excepted); and also to insure the said premises from loss by fire during the said term in one of the insurance offices in London or Westminster, to be approved of by the said A. B., for the sum of *l.*; and at all times to produce

* If on any other days, mention them specially.

the policy or policies of such insurance, and the receipts for the premiums in respect of the same, to the said A. B., his heirs and assigns; and also to rebuild or repair the said premises if destroyed or injured by fire, or otherwise; and also not to assign or under-let the said premises without licence in writing from the said A. B., his heirs and assigns; and also not to carry on, or permit to be carried on in the said premises, the trade or business of a [*insert names of trades and businesses intended to be prohibited*], or any other noisome, dangerous, or offensive trade, business, or occupation; and that the said indenture of lease shall contain a proviso empowering the said A. B. to re-enter on the said premises, and avoid the said term in case of non-payment of the reserved rent for twenty-one days after the same shall become payable, or in case of non-performance of any of the covenants of the said lease on the part of the said C. D. to be observed and performed. And also a proviso for the abatement or suspension of the said rent, during such time as the said premises may remain wholly or partially untenantable or useless, in consequence of destruction, or damage by fire, flood, storm, or tempest, the amount of such abatement to be determined, in case of dispute, by the award of two arbitrators and an umpire, in the usual manner. And it is also further agreed, that the said lease shall also contain a covenant on the part of the lessor, that, subject to the payment of the rents and performance of the covenants by the said C. D., his executors, administrators, and assigns, he and they, the said C. D., his executors, administrators, and assigns, shall peaceably and quietly hold and enjoy the said premises for the term thereby demised. And it is further agreed, by and between the parties hereto, that the expense of preparing the said lease, and a counterpart thereof, shall be paid and borne by the said parties equally. And lastly, that the destruction of the said premises by fire or otherwise, before the execution of the said lease, shall not in anywise alter or vacate this contract. In witness, &c.

8.

SURRENDER OF A TENANCY FROM YEAR TO YEAR.

Memorandum made this day of , 18 , between A. B. of &c., of the one part, and C. D. of &c., of the other part.

Whereas the said A. B. has been lately, and up to the date hereof, the occupier of a house, No. Street, which he holds from year to year, as the tenant of the said C. D., under a written agreement, dated the day of , 18 . And whereas it has been agreed by and between the said A. B. and C. D. that such tenancy should be determined forthwith: Now it is hereby witnessed, that in consideration of being relieved by the said C. D. from the further payment of rent and performance of the stipulations contained in the said agreement of the day of , 18 , the said A. B. hereby delivers up and surrenders the said dwelling-house, and all his interest therein, under the said agreement, to the said C. D. And the said C. D., in consideration of such surrender, accepts the same, and releases the said A. B. from any further payment of rent for the said dwelling-house, and hereby discharges and exonerates the said A. B. from any further fulfilment of, or liability on account of, any of the stipulations or obligations contained in the said agreement, and on the part of the said A. B. to be performed, but without prejudice to the rights and remedies of the said C. D., in respect to any past breaches of such stipulations and obligations. In witness, &c.

[NOTE.—This instrument ought to be executed whenever one tenant is substituted for another. For the reasons we have given,* an arrangement of this kind should never be made verbally. The form will easily be adapted to the surrender of a tenancy under a written agreement (not under seal) for three years. If the lease

* See chapter xiv., page 125.

be for a term of more than three years, and by deed, it can only be surrendered by deed.]

9.

SALE OF THE GOODWILL OF A SHOP AND FIXTURES.

Memorandum of an agreement made the day of , 18 , between A. B. of &c., C. D. of &c., and E. F. of &c.

Whereas the said A. B. is at present the occupier of a house and shop, No. Street, which he holds for a term of three years, under an agreement dated the day of , as tenant to the said E. F. [and in which he does now, and has for some time carried on, the business of a grocer and tea-dealer]. And whereas the said term of three years will expire on the day of next. And whereas the said E. F. has let the said premises to the said C. D. for a term to commence at the expiration of the term of the said A. B. And whereas an agreement has been entered into between the said A. B. and C. D. for the sale and purchase [of the goodwill of the said business of a grocer and tea-dealer, and also] of certain fixtures belonging to him, the said A. B., and now being in and upon the said premises: Now it is hereby witnessed, that in consideration of the sum of *l.*, paid to him by the said C. D. (the receipt whereof is hereby acknowledged by the said A. B.), he, the said A. B., bargains, sells, and assigns unto the said C. D. [all his interest in or concerning the said trade or business of a grocer and tea-dealer, heretofore carried on by him at the said premises, and also] all the fixtures now being in, upon, or about the said premises, as per inventory annexed (*a*). And it is hereby further witnessed, that in consideration that the said A. B. will not remove the said fixtures now belonging to him, and being in and upon the said premises, before the expiration of his said term and

tenancy, he, the said E. F., hereby agrees that he will not at any time claim the said fixtures on account of their not having been removed by the said A. B. before the expiration of his tenancy; and that he will permit the said C. D. to remove or sell them at any time during or previous to the expiration of his term in, or tenancy of, the said premises. In witness, &c.

Dated, &c.

A. B.
C. D.
E. F.

THE INVENTORY.

[*Insert list of articles signed at foot by the three parties.*]

[NOTE.—By omitting the passages inserted between brackets the above becomes a simple assignment of fixtures. It will be readily adapted to the case of an arrangement between two tenants from year to year. For the reasons why it is desirable that the landlord should be a party to the assignment, see Chapter XI., page 109.]

The propriety of having an inventory either annexed to the agreement or separate from, but referred to in it, must be considered with reference to the remarks on "schedules" at page 162. If it is determined, for the sake of avoiding stamp duty, not to annex or refer to any inventory, all reference to the inventory must be struck out, and a catalogue prepared and authenticated as there recommended. If a sale of "goodwill" is in contemplation, it would be desirable to insert at (*a*) the following words, "And the said A. B. also hereby promises and agrees that he will not, at any future time, either carry on, or assist in carrying on, in his own name, or in that of any other person or persons, the business of a , within miles from the said shop and premises." The restriction as to distance must be reasonable and limited.

10.

BOND FOR PERFORMANCE OF AN AGREEMENT (INCLUDING PAYMENT OF RENT).

Know all men, that we, A. B. (*tenant*) of &c., and C. D. (*his surety*) of &c., are held and firmly bound to E. F. (*the landlord*) of &c., on the sum of *l.* of lawful money of Great Britain, to be paid to the said E. F., or to his certain attorney, executors, administrators, or assigns; for which payment, to be well and truly made, we jointly bind ourselves, our heirs, executors, and administrators; and each of us separately and severally binds himself, his heirs, executors, and administrators, firmly by these presents.

Whereas the said A. B. has this day become tenant of a house situate, &c., and belonging to the said E. F., on the terms of an agreement bearing even date with these presents. And whereas, on the treating for the letting and taking of the said premises, it was agreed that the payment of the rent reserved by, and the fulfilment of the stipulations contained in, the said agreement should be secured by the joint and several bond of the said A. B. and C. D., as surety for the said A. B.: Now, therefore, the condition of the above-written bond is such, that if the said A. B. and C. D., or either of them, or the heirs, executors, or administrators of them, or either of them, shall well and truly pay the rent reserved by the said agreement, and well and truly perform and cause to be performed all the stipulations contained therein, and on the part of the said A. B., his heirs, executors, or administrators, to be fulfilled, then this obligation to be void; otherwise to remain in full force and virtue. In witness, &c.

Sealed and delivered (being first duly stamped) in the presence of } G. H. A. B. (seal.) C. D. (seal.)

[This instrument is a *deed*. For an explanation what a deed is, and how it should be executed, see the Glossary.]

11.

INDEMNITY BY A LANDLORD TO A TENANT AGAINST ARREARS OF RENT, RATES, AND TAXES.

I, A. B., the lessor of a certain house and premises, No. in Street, in the parish of , in the borough of , in the county of , now about to be taken and occupied by C. D., as tenant, do hereby, in consideration of his so taking and occupying the said premises as such tenant, agree and undertake to indemnify the said C. D. from and against the payment of any rent, taxes, or rates chargeable upon the said premises, or upon any person in respect of the occupation thereof, which shall have accrued, due, or become in arrear prior to the date of the commencement of his said tenancy or occupation. As witness my hand, this day of , 18 .

A. B.

(Witness) E. F.

12.

RECEIPT FOR RENT.

April 2nd, 1856.

Received of Mr. A. B. the sum of *5l.*, being one quarter's rent, due at Lady-day last, for the house No. *5*, John Street.

5l.

C. D.

[NOTE.—If the rent be paid to the landlord's agent he should sign his own name, but write underneath it, "Agent for Mr. C. D., the landlord of the above house." If the amount for which the receipt is given be above *2l.*, it will require a penny stamp.]

NOTICES.

13.

NOTICE TO QUIT FROM LANDLORD TO YEARLY TENANT.

Mr. A. B.,

I hereby give you notice to quit and deliver up the messuage and premises which you now hold of me, situate No. , Street, in the town of , on the day of next.

Yours &c.,

Dated the day of , 18 . C. D.

14.

BY AGENT OF THE LANDLORD.

Mr. A. B.,

I do hereby, as the agent for and on behalf of your landlord, Mr. , of , give you notice to quit and deliver up possession of the premises, situate at, &c., which you now occupy as his tenant, on the day of next.

Dated the day of , 18 .

Yours, &c.,

C. D.

15.

NOTICE BY LANDLORD WHERE THE DATE OF COMMENCEMENT OF TENANCY IS UNCERTAIN.

Mr. A. B.,

I hereby give you notice to quit and deliver up the house and premises which you now hold of me, situate, &c., on the day of next, provided that

your tenancy originally commenced on that day of the year and month, or if otherwise, then that you quit and deliver up possession of the premises at the end of the year of your tenancy which shall expire next after the end of one half-year from the time of your being served with this notice.

Dated the day of , 18 .

Yours, &c.,

C. D.

[If the tenancy is determinable at a quarter's notice, then say "quarter" instead of "half-year."]

16.

NOTICE BY TENANT TO LANDLORD.

Sir,

I hereby give you notice that on the day of next, I shall quit and deliver up possession of the house and premises which I now hold of you, situate at, &c.

Dated this day of , 18 .

Yours, &c.,

To Mr. A. B. C. D.

17.

NOTICE TO DETERMINE A LEASE.

[Long leases are often determinable at the option of one or other, or of either of the parties at the end of a certain number of years; for instance, it is very usual for a twenty-one years' lease to be determinable on notice at the end of seven or fourteen years. The following is a notice by the lessee; but the form can easily be adapted to the *case of a notice* by the lessor.]

Mr. A. B.,

Sir,—I hereby give you notice that on the day of next, the first seven years of the term of twenty-one years (determinable at the end of seven or fourteen years) in the dwelling-house and premises situate, &c., demised by you to me by indenture of lease, dated the day of , 18 , will expire; and that on that day I shall, in virtue of the option and power reserved to me by the said indenture, determine the said term, and quit and deliver up to you the possession of the said messuage and premises, and surrender to you all the residue of my interest in the said term so created as aforesaid.

Dated, &c. Yours obediently, C. D.

18.

NOTICE BY LANDLORD TO TENANT TO QUIT LODGINGS.

Sir [*or* Madam],

I hereby give you notice to quit and deliver up, on the day of next [*or* instant], the apartments or rooms which you now hold of me in this house, No. , Street, &c.

Dated day of , 18 .

Yours, &c., A. B.

To Mr. [*or* Mrs.] C. D.

[NOTE.—There will be no difficulty in framing from this, with the assistance of the previous forms, a notice by the landlord to the tenant where the commencement of tenancy is uncertain, or a notice by the tenant to the landlord.]

19.

NOTICES BY LANDLORD TO TENANT TO QUIT, OR THAT DOUBLE VALUE OR DOUBLE RENT MUST BE PAID.

Sir,

I hereby give you notice to quit and deliver up, on the day of next, the possession of the house

and premises which you now hold of me, and occupy as my tenant; and I also give you notice that in default of your compliance with this notice I shall insist* upon your paying to me for so long as you shall keep possession of the said house or premises after the expiration of the said notice on the day of next, and in respect of such unlawful occupation by you, double the yearly value of the said house and premises, according to the form of the statute in such case made and provided.

Dated this day of , 18 .

Yours, &c.,

A. B.

To Mr. C. D.

[If the landlord has already given notice to quit, and before its expiration has reason to fear the tenant intends to hold over, he may send the following notice.]

Sir,

I hereby give you notice that if you do not quit and deliver up possession of the house and premises which you now hold of me, at No. , Street, &c., on the day of next, on which day the notice to quit dated the day of last, and duly served upon the same day, expires, I shall insist, &c. [*as in the last form from the asterisk to the end*].

Dated, &c.

Yours,

A. B.

To Mr. C. D.

[If the tenant has given notice to quit, and the landlord apprehends that he will not go when his notice expires, he should send the following.]

Sir,

I hereby give you notice, that if you do not quit and deliver up possession of the house and premises which you now hold of me at No. , Street, on the day of next, on which day your notice to quit, dated the day of last, and served upon me on the same day, expires, I shall insist upon *your paying to me* for so long as you shall keep posses-

sion of the said house and premises, after the expiration of your said notice, on the day of next, and in respect of such unlawful occupation by you, double the [yearly] rent which you have hitherto paid for the said house and premises, according to the form of the statute in such case made and provided.

Dated, &c. Yours, &c., A. E.

To Mr. C. D.

[NOTE.—As we have mentioned in the body of the work, a demand by the landlord of double rent in case of the tenant holding over after the expiration of *his own* notice to quit *need* not be in writing, but it always should be. The liability to pay double rent extends to tenants for less than a year; if it is intended to put the statute in force against them, "monthly" or "quarterly" must be substituted for "yearly" in the latter part of the notice.]

20.

NOTICE TO TENANT TO YIELD POSSESSION.

(Preparatory to proceedings under 1 and 2 Vict. c. 74.)

Sir,

I, , do hereby give you notice that, unless peaceable possession of the house and premises, situate at No. , Street, &c., which were held by you of me [under a tenancy from year to year (*or as the case may be*), which was determined by notice to quit from me on the day of], and which tenement is now held over and detained from me, be given to me on or before the expiration of this notice, I shall on next, the day of , at of the clock of the same day, at , apply to Her Majesty's justices of the peace acting for the district of (being the district, division, or place in which the said tenement, or any part thereof, is situate),

in petty sessions assembled, to issue their warrant directing the constables of the said district to enter and take possession of the said tenement, and eject any person therefrom.

Dated this, &c. Yours, &c., A. B.

Mr. C. D.

[NOTE.—If the tenant held for a term which has expired, then, in place of the words in brackets, say, "for a term of years which expired on the day of last." If the premises are in the metropolitan district, the notice after the words "apply to" will run as follows:—"One of the metropolitan police magistrates, sitting at the [*insert name of court*] police court, and acting for the district or division in which the said tenement, or any part thereof, is situate, to issue his warrant directing one of the metropolitan police constables to enter and take possession of the said tenement, and eject any person therefrom."]

21.

NOTICE TO BE AFFIXED ON DESERTED PREMISES.
(Under stat. 11 Geo. II. c. 19, s. 16, and 57 Geo. III. c. 52.)

A. B.,

Take notice, that on the complaint of C. D., of &c. [*insert landlord's residence*], made unto us, E. F. and G. H., two of Her Majesty's justices of the peace for the said [borough]* that you, the said A. B., have deserted the messuage and premises, situated at [*insert where premises are*] unto you, demised at rack-rent by the said C. D., and that there is in arrear and due from you, the said A. B., unto the said C. D., one half-year's rent for the said demised premises, and that you have left the

* If the premises are not in a borough for which there is a separate commission of the peace, say "for the said county of , and acting for the division or district in which the premises hereinafter mentioned are situate."

said premises unoccupied and vacant, so that no sufficient distress can be had to countervail the said arrears of rent, we, the said justices (neither of us having any interest in the said demised premises), on the said complaint as aforesaid, and at the request of the said C. D., have this day come upon and viewed the said demised premises, and do find the said complaint to be true; and on the day of this present month of we will return to take a second view thereof; and if, upon such second view, you, or some other person on your behalf, shall not appear and pay the said rent in arrear, or there shall not be sufficient distress on the said premises, that we, the said justices, will put the said C. D. into possession of the said demised premises, according to the form of the statute in such case made and provided. In witness whereof we have put our hands and seals, and have caused this notice to be affixed on the outer door of the dwelling-house, the same being the most notorious part of the said premises, this day of , in the year of the reign of our Sovereign Lady Victoria of the United Kingdom of Great Britain and Ireland Queen.

Dated, &c. (Signed) E. F. (seal.)
G. H. (seal.)

22.

NOTICE TO REPAIR IN CASE OF YEARLY TENANCY, OR WHERE THERE ARE NO EXPRESS COVENANTS OR STIPULATIONS.

Sir,

I hereby give you notice that I require you forthwith to do and execute the following repairs to the messuage and premises situate at, &c., which you now hold as my tenant, viz. [*insert list of repairs*].

Dated the day of , 18 .

Yours, &c.,

Mr. C. D. A. B.

23.

NOTICE TO REPAIR WHERE THE TENANT HOLDS UNDER LEASE WITH EXPRESS COVENANT TO REPAIR, AND PROVISO FOR RE-ENTRY IF REPAIRS NOT MADE.

Sir,

Having caused the house and premises, No. , Street, &c., belonging to me, and now held by you as my tenant under a lease for years, to be surveyed by Mr. E. F., a competent surveyor, I find from his report that the following repairs (specified in the schedule hereunder written) are necessary to be done, and should be done by you, according to the express covenants for repairs contained in your lease; and I hereby give you notice that unless they are done and executed within the space of three calendar months from the date hereof (when I shall again inspect the said house and premises), the said lease will become void and forfeited, and I shall re-enter into the possession of the said premises.

Dated, &c. Yours,

Mr. C. D. A. B.

SCHEDULE.

[*Enumerate repairs, and at foot say*]

All the above repairs must be executed in the best and most substantial manner; the best materials being used, and the whole executed according to the satisfaction of E. F., my surveyor.

24.

NOTICE TO BE GIVEN IF THE ABOVE NOTICE HAS BEEN DISREGARDED.

Sir,

In pursuance of the notice given by me on the day of last, and delivered to you on the same day, *at your house,* situate at, &c., specifying certain repairs

which I required to be done by you within three calendar months on the premises therein mentioned, I have this day inspected and surveyed the said premises, and finding that none of the said reparations have been done and executed, I do hereby give you notice that the lease under which you hold the said premises from me is forfeited, and that unless you surrender possession in days from hence my attorney will forthwith commence an action of ejectment against you; and also that unless you pay in weeks the sum of *l.*, at which Mr. E. F., my surveyor, has assessed the damage caused by your neglect to repair and keep in repair the said premises, my said attorney will also bring an action against you to recover the same.

Dated, &c. Yours, &c.,

To Mr. C.D. A.B.

25.

NOTICES BY THE LANDLORD WHEN THE TENANT'S GOODS ARE TAKEN IN EXECUTION.

These notices are to be given by the landlord when the tenant's goods have been seized under an execution, and rent is in arrear.

1. *To the Sheriff.**

To A. B., Esquire, Sheriff of the county of , and to Mr. , his officer, and all others whom it may concern.

Take notice, that the sum of *l.*, for [one year's] rent of the premises situate at No. , Street, is now due to me from my tenant, C. D., of whose goods you are in possession upon the said premises, by virtue of Her Majesty's writ of *fieri facias*, dated the day of , 18 , and returnable to [the Barons of the

* This will always be the notice when the execution is upon an action in a superior court.

Exchequer], and that I now claim the said sum of *l.*, as due to me for and on account of the said rent due to me, and still unpaid.

As witness my hand, this day of , 18 .

A. B., landlord of the said premises.

2. *Notice to the High-bailiff of a County Court.*

To the High-bailiff of the County Court of , at , and to his bailiffs making the levy hereinafter mentioned.

Whereas, I have been informed that you have taken the goods of C. D., in the house occupied by him at under and by virtue of a warrant of execution issued from the said County Court of , at , now I hereby give you notice that the said C. D. holds the said house, with the appurtenances as tenant to me from year to year [*or as the case may be*], from the day of , 18 , at the yearly rent of *l.*, payable quarterly, and that I now claim the sum of *l.* as due to me for [two] quarters of the said rent due, and ending on , and now in arrear and unpaid.

Dated this day of , 18 .

A. B., landlord of the said premises.

26.

PROCEEDINGS IN DISTRESS.

1. *Warrant to distrain for Rent.*

To Mr. A. B., my bailiff,

I hereby authorise and require you to distrain the goods and chattels [and growing crops] in and upon the dwelling house [*or* "farm" *or* "lands"] and premises of C. D., in [*if a dwelling-house, state also street and number*] the parish of , in the county of , for *l, being* years' [*or* "quarters'"] rent due to

me for the same at last; and to proceed thereon for the recovery of the said rent as the law directs.

Dated, &c. Yours, &c.,

E. F.

2. *How to make the Distress.*

Having entered, let the bailiff seize some article on the premises—if in a house, a piece of furniture—and say, "I seize this in the name of all the other goods on the premises, for the sum of *l.*, being one year's rent due to E. F., your landlord at day last, by virtue of an authority to me given by the said E. F., your landlord, for that purpose."

3. *Inventory of Goods distrained.*

An inventory of the goods and chattels distrained by me, E. F. [*or* A. B. as bailiff to Mr. E. F.], this day of , in the year of our Lord 18 , in the dwelling-house [*or* "farm" *or* "lands"] and premises of C. D., situate in [Street, in] the parish of , in the county of [*if distress made as bailiff, say* "by the authority and on behalf of the said E. F."], for *l.*, being years' [*or* "quarters'"] rent due to me [*or* "to the said E. F."] at last, and as yet in arrear and unpaid.

IN THE DWELLING-HOUSE.

1. *In the Kitchen.*

Two deal tables, one copper kettle, eight chairs, &c.

2. *In the Parlour.*

Two card tables, six mahogany chairs, two lounging chairs, &c.

3. *In the Dining Room.*

[And so on throughout the house.]

IN THE APPURTENANCES.

1. *In the Yard.*

2. *In the Stable, &c.*

And so on, describing the things taken, and the places from which they are taken. At the foot of the inventory subscribe one of the following notices to the tenant, according as the case may be.

4. *Notice where Distress is of Furniture or other Chattels.*

Mr. C. D., and all whom this may concern,

Take notice, that I have this day distrained [*or*, "that I, as bailiff to Mr. E. F., your landlord, have this day distrained"] on the premises abovementioned, the goods and chattels specified in the above inventory for *l.*, being years' [*or* "quarters'"] rent due to me [*or* "to the said E. F."] at last, for the said premises; and that unless you pay the said rent, with the charges of distraining for the same, within five days from the date hereof, the said goods and chattels will be appraised and sold according to law. [If the goods are not impounded on the premises, the place to which they are removed must be stated.] Dated, &c. A. B.

5. *The like for growing Crops under* 11*th Geo. II. c.* 19, *s.* 8.

Mr. C. D.,

Take notice, that I have this day distrained [*or* "that I, as bailiff to Mr. E. F., your landlord, have distrained"] on the land and premises above-mentioned, the several growing crops specified in the inventory, for *l.*, being quarters' rent due to me [*or* "to the said E. F."] at last, for the said lands and premises; and unless you pay the said rent, with the charges of distraining for the same, I shall proceed to cut, gather, make, cure, carry, and lay up the crops when ripe in the barn, or other proper place on the said premises, and, in convenient time, sell and dispose of the same towards satisfaction of the said rent, and

of the charges of such distress, appraisement, and sale, according to law.

Dated A. B.

[If the tenant require further time than the five days allowed by law for the payment of his rent, and the landlord choose to grant it, the following memorandum must be obtained from the tenant in order to prevent the landlord or his bailiff being deemed a trespasser if he remain in possession more than five days.]

6. *Memorandum of Tenant's Consent to Landlord continuing in Possession.*

Mr. E. F.,

I hereby desire you will keep possession of the goods and chattels which you have this day distrained for rent due from me to you in the place where they now are lying in the [room on the floor of the] house No. , Street, in the county of [*being the premises where the distress was made*] for the space of days from the date hereof on your undertaking to delay the sale of the said goods and chattels for that time, to enable me to discharge the said rent, and I will pay the man for keeping the said possession.

Dated A. B.

7. Oath to be administered to the Appraisers by the Constable.

You and each of you shall well and truly appraise the goods and chattels mentioned in this inventory [*which the constable should then hold in his hand and show to the appraisers*] according to the best of your judgment.

So help you God.

8. *Memorandum of this Oath to be endorsed on the Inventory.*

Memorandum: That on the day of , in the year of our Lord, 18 , B. of , and E. F. of , two sworn appraisers, were sworn upon the Holy Evangelists, by me, C. D. of , constable, well and

truly to appraise the goods and chattels mentioned in this inventory, according to the best of their judgment.

As witness my hand,

C. D., constable.

Present at the time of swearing the said A. B. and E. F. as above, and witnesses thereto } I. K. L. M.

When the appraisers have viewed and valued the goods the following further indorsement must be made upon the inventory:—

9. *The Appraisement.*

We, the above-named A. B. and E. F., being duly sworn upon the Holy Evangelists, by C. D., constable, above-named, well and truly to appraise the goods and chattels mentioned in this inventory, according to the best of our judgment, and having viewed the said goods and chattels, do appraise and value the same at the sum of

As witness our hands, this day of , 18 ,

A. B. } Sworn
E. F. } appraisers.

27.

PROCEEDINGS IN REPLEVIN.

1. *Bond in Replevin when the Tenant intends to commence Proceedings in one of the superior Courts.*

Know all men by these presents, that we, A. B. of, &c., C. D. of &c., and E. F. of &c., are held and firmly bound unto G. H. of &c., in *l.*, to be paid to the said G. H.,* or his certain attorney, executors, administrators, or assigns, for which payment to be made we bind ourselves and each and every of us in the whole, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this day of , *one thousand* eight hundred and

* The landlord.

I approve of this bond.
I. K.
Registrar.
(Seal).

Whereas, the above-named C. D. and E. F. at the request of the said A. B., have agreed to enter into the above-written obligation, and his security has been approved of by , registrar of the county court of , holden at , as appears by his allowance in the margin hereof.

Now the condition of this obligation is such that if the above bounden A. B. do, and shall, within one week from the date of the said obligation, commence an action of replevin against the above-named G. H. in Her Majesty's Court of at Westminster, for taking and unjustly detaining of certain goods and chattels of the said to wit, [*here insert description of the goods and chattels*] and prosecute such action with effect, and without delay, and unless judgment be obtained thereon by default, do and shall prove before the said Court of , that he, the said , had good ground for believing that the title to the hereditament in respect of which the distress was made was in question, [*or*, that the title to a toll was in question] [*or*, that the title to a market was in question] [*or*, that the title to a fair was in question] [*or*, that the title to a franchise was in question] [*or*, that the alleged rent, in respect of which the distress was made, exceeded twenty pounds] and do and shall also make return of the said goods and chattels, if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A. B. (seal.)
C. D. (seal.)
E. F. (seal.)

Signed, sealed, and delivered by the above bounden, in the presence of } K. L.

[This bond requires no stamp.]

2. *Bond in Replevin where Tenant intends to commence his Action in the County Court.*

[Copy the two first paragraphs of the above bond (in-

cluding the marginal note by the registrar) down to the words "margin hereof," and then proceed:—]

Now, the condition of this obligation is such that, if the above bounden A. B. do, and shall, within one month from the date of the said obligation, commence an action of replevin against the above-named G. H., in the County Court of , holden at , for taking and unjustly detaining of certain goods and chattels of the said , to wit, [*here insert description of the goods and chattels*], and prosecute such action with effect and without delay, and do and shall also make return of the said goods and chattels, if return thereof shall be awarded, then this obligation shall be void and of no effect, otherwise shall be and remain in full force.

A. B. (seal.)
C. D. (seal.)
E. F. (seal.)

Signed, sealed, and delivered by the above bounden in the presence of } K. L.

[NOTE.—No stamp required].

Statement of the Goods and Chattels distrained, on entering a Plaint in Replevin in the County Court.

In the County Court of , at , the day of , 18 .

Between A. B., Plaintiff, and C. D., Defendant.

The following are the particulars of the goods and chattels of A. B., taken under a distress for rent, by C. D. at the dwelling-house, No. , Street, in the parish of , in the county of , and within the district of this court, on ; and with respect to which I now enter my plaint in the said court. [*Here give a complete list of the goods distrained, and at foot let the particulars be signed by the plaintiff.*]

GLOSSARY OF LEGAL TERMS.*

Covenant.—A stipulation or agreement contained in a *deed*, and entered into by one or more of the parties thereto.

Condition.—This word is applied in law to any contingency, upon the happening of which it is provided in any lease or other document conveying an interest in real property, that such interest shall either be increased or diminished, or shall altogether cease and determine.

Deed.—A document which is not only signed, but *sealed* and *delivered* by the parties thereto. At the present day the seals generally consist of wafers affixed at the end of the signatures, and the delivery is usually made by each party placing his finger on the wafer, which represents his seal, and saying "I deliver this as my act and deed."

Demise.—A granting or letting of land for any, less than a freehold, interest.

Distress.—The proceeding by which a landlord seizes his tenant's goods, for rent due and in arrear.

Emblements.—This term expresses a right which the law gives the tenant of a term of uncertain duration, which has unexpectedly determined without any fault of his, to take the annual crops growing on the land when his interest determines.

Estate.—This word, as used in law, is nearly synonymous with *interest*. Thus we say—a person has a "life-estate," meaning that he is entitled to the enjoyment of land, in house, &c., during his life; but that he cannot bequeath it, and that on his death it will not descend to his heirs.

Execution.—The process by which the sheriff, or the high-bailiff of a county court, enforces the judgment of a superior or county court by seizure and sale of the goods of a party who has been unsuccessful in an action.

Fee-simple.—A person is said to have the *fee-simple* of a piece of land or a house, when he has the entire, absolute, and unconditional ownership of it; and when, if he were to die intestate (or without making a will), it might be inherited not only by his *descendants*, but by his relations generally, according to the rules of inheritance and succession prescribed by law.

* Should this little work fall into the hands of a professional reader, it will, of course, be understood that the explanation of legal terms here given is entirely of a *popular* character.

Fee-Tail.—An *estate* (see above) in land granted to a man "and the heirs of his body." It descends only to the issue of the person who first takes the land, and if they fail, it becomes the property of the heir of the person who first granted it. Each person who successively comes into possession of such an estate is called a "*tenant-in-tail,*" and except by a peculiar conveyance enrolled in the Court of Chancery he cannot alienate it, so as to deprive the heir of his right to inherit it.

Freehold.—An estate or interest in land, for *life*, in *fee-simple*, or in *fee-tail* (see above) is a *freehold.*

Infant.—Any person under 21 years of age.

Land.—Comprehends in law any ground, soil, or earth whatsoever, and includes houses and buildings of all kinds; for the ownership of land (unless there is a special exception) carries with it everything both above and below the surface.

Lease.—An instrument by which land, houses, &c., are let. The term is, in practice, usually confined to the case where the interest let or granted is for a certain term of years.

Lessor.—The person who *lets* land.

Lessee.—The person who *takes* land.

Parole.—By word of mouth.

Personal Property—Personalty.—Goods, chattels, moveables.

Proviso.—Substantially the same as a *condition.*

Real Property—Realty.—Lands, buildings, &c.

Reversion.—The interest which the owner of an *estate* (see above) in land, reserves to himself, after the expiration of a smaller interest, or one of a shorter duration which he has granted to another person. For instance, if the owner of a *fee-simple* grants another an *estate* for life, the right which he has to have the property back on the death of the person to whom it is so granted is his "*reversion;*" and the interest which a landlord retains in land which he has granted or let to a tenant for a limited period is his "*reversion.*"

Tenant-in-tail.—See *Fee-tail.*

Term.—The period for which land is let or leased. It is also often applied to the tenant's interest; thus, a lessee is said to "sell or assign his term."

Under-Lease.—A person is said to make an *under-lease*, or to *under-let*, when, being a tenant for years, he relets his holding for part of the term he has in it; or being a tenant from year to year, he lets again to another tenant of the same kind.

Waiver.—A relinquishment of some right or claim, or of the power to insist on a notice to quit or otherwise.

Waste.—The doing injury or permitting it to accrue to land or buildings of which one is tenant.

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